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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 101.

THE JEFFERSON CITY GAS LIGHT COMPANY, PLAINTIFF IN ERROR,

vs.

FREEMAN CLARK AND THE CITY OF NEW ORLEANS.

FILED AUGUST 31, 1875.

PHILADELPHIA
No. 257.
BAR

THE CITY OF NEW ORLEANS, PLAINTIFF IN ERROR,

vs.

FREEMAN CLARK AND THE JEFFERSON CITY GAS LIGHT COMPANY.

FILED OCTOBER 19, 1875.

Nov 24 1877

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No. 257.

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vs.

FREEMAN CLARK AND THE JEFFERSON CITY GAS LIGHT COMPANY.

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1 UNITED STATES OF AMERICA:

Circuit court of the United States, fifth circuit and district of Louisiana.

FREEMAN CLARKE
vs.
JEFFERSON CITY GAS LIGHT COMPANY ET AL. } No. 7142.

Petition.—Filed February 7th, 1874.

To the honorable the judges of the United States circuit court for the fifth judicial circuit and district of Louisiana:

The petition of Freeman Clarke respectfully showeth that he is a resident and citizen of the State of New York; that he has cause to and does complain of the Jefferson City Gas Light Company, a corporation under the laws of Louisiana, having its domicile in the parish of Orleans, in last-named State, and of the city of Carrolton, a municipal corporation under the laws of said Louisiana, and situated in the
2 parish of Jefferson therein, for this, to wit, that on the 11th day of January, 1871, the said Gas Light Company and the said city of Carrolton entered into an agreement which is embodied in an ordinance that day passed by the mayor and council of said city of Carrolton, which ordinance is as follows, to wit:

"An ordinance to facilitate the introduction of gas within the limits of the city of Carrolton, to provide for making a contract with the Jefferson City Gas Light Company, in relation thereto, and to authorize the issue of bonds, &c.

"Whereas, under an act of the legislature of the State, approved March 9th, 1869, the Jefferson City Gas Light Company is given the exclusive privilege of supplying gas-light in the territorial limits of the city of Carrolton; and whereas the said Gas Light Company proposes to lay pipes and introduce gas in the city under certain conditions; therefore:

"SECTION 1. Be it ordained, &c., That the mayor be and is hereby authorized to enter into a contract by public act with the said Jefferson City Gas Light Company, as follows:

3 "The said Jefferson City Gas Light Company shall, within six months of the date of the contract, or as soon as can be, lay an eight-inch gas-main from the lower line of the city of Carrolton, up S't Charles street, to the Carrolton railroad depot, on one side of said street, and a three-inch main from lower line up the other side of S't Charles street to Canal avenue, and up Levee street from the aforesaid depot to the upper line of the city of Carrolton, with the necessary branch-boxes, &c., and, as soon as practicable, shall lay branch-mains, pipes, &c., out Canal avenue, Dublin, Washington, and other principal streets, in order to light the said streets, and supply the citizens with gas-light. Also, the said company shall provide and erect the necessary lamp-posts along the said line.

"That in consideration of the foregoing that the city of Carrolton, through the mayor, shall provide and issue forty-five one thou-
4 sand dollar bonds of the city of Carrolton, payable in thirty years, with interest at eight per cent. payable semi-annually to

the order of the said Gas Light Company, which bonds shall be dated and delivered to the said Gas Light Company when the pipes, mains, &c., are laid and the lamp-posts erected along the line of S't Charles street and Levee street, from Lower Line street to Upper Line street, and gas turned on for use; provided the said company shall guarantee the said bonds and assume the payment of the principal thereof at maturity; and provided further, that if at the maturity the said company shall fail to pay said bonds, then the said city shall pay the same and become the owner of all the gas-works, main-pipes, posts, &c., then lying and being within the present limits of the city of Carrolton.

"That the treasurer of the city of Carrolton shall specially appropriate and set aside in lawful money, every month, such amount or
5 proportion of the taxes and dues of said city as shall be necessary to meet the interest on said bonds and such gas-bills as may accrue against said city, and that the mayor in said act shall be authorized to make such other agreements, not inconsistent herewith, as may be necessary to carry out the purposes of the ordinance, and make the said contract legal and conclusive on both parties thereto.

"SECTION 2. Be it further ordained, &c., That this ordinance shall take effect from and after its passage.

"Passed January 11th, 1871."

Petitioner further shows that, in pursuance of the authority conferred by said ordinance, the mayor of said city of Carrolton entered into a contract with the said Gas Light Company embracing the terms and stipulations contained in said ordinance, and the said company having complied with the said agreement and the conditions fixed in said ordinance, and being fully entitled thereto, the mayor of said city of Carrolton caused to be provided and executed forty-five bonds of said
6 city of Carrolton, each for one thousand dollars, bearing interest at eight per cent., payable semi-annually, which bonds were numbered from one to forty-five inclusive, and made payable thirty years from date, and they were dated the first day of July, A. D. 1871; and to said bonds were attached interest coupons, wherein it was stipulated to pay the bearer the sum of forty dollars on each bond as interest, the coupons being due on the first day of January and the first day of July of each and every year until the principal of said bonds should mature and become due, and on the first day of July, A. D. 1871, the said mayor delivered said bonds with coupons attached to the said Gas Light Company, and thereupon the said company, by its president, John Lockwood, placed upon each of said bonds the following endorsement and guarantee, to wit:

"The Jefferson City Gas Light Company guarantees the payment of the principal and interest of this bond to the holder thereof.

(Signed) "JOHN LOCKWOOD, *President.*"

7 That soon thereafter the said company, for a good and valuable consideration, sold and delivered the said bonds and coupons to petitioner, who is now the owner and holder thereof, and the sum paid for said bonds and coupons was received by and inured to the benefit of said Gas Light Company.

And petitioner further shows that the coupons of said bonds which fell due July 1st, 1872, Jan'y 1st, 1873, July 1st, 1873, and January 1st, 1874, the four series numbering in the aggregate one hundred and eighty coupons, and each for the sum of forty dollars, are wholly due

and unpaid, and that the petitioner is the owner and holder thereof, and that there is due him from the said Jefferson City Gas Light Company, and the said city of Carrolton, in solido, on the said overdue coupons, the aggregate sum of seven thousand two hundred dollars, with interest thereon from judicial demand.

Petitioner alleges amicable demand and a refusal thereof. Wherefore petitioner prays that the said Jefferson City Gas Light Com-
8 pany and the said city of Carrolton, through their proper officers, be cited to answer this petition according to law, and on the final hearing hereof that he recover judgment against said respondents in solido for the said sum of seven thousand two hundred dollars, with legal interest from judicial demand, and for costs, and that proper and necessary orders be made on the officers of the said city of Carrolton, commanding them to provide the funds as required in said ordinance to pay the judgment herein demanded; and he prays for equitable relief.

(Signed) HAYS & NEW, *Att'ys.*

Citation to Jefferson City Gas Light Company.

The President of the United States of America to the marshal of the district of Louisiana, greeting:

FREEMAN CLARK
vs. } No. 7142.
JEFFERSON CITY GAS LIGHT CO. ET AL.

You are hereby commanded to summon the Jefferson City Gas
9 Light Company, through their proper officer, to comply with the demand of Freeman Clarke, a citizen of the State of New York, contained in the petition of which a copy accompanies this citation, or to deliver their answer to the same in the office of the clerk of the circuit court of the United States, fifth judicial circuit, and district of Louisiana, in the city of New Orleans, in ten days after service hereof, or judgment will be rendered against them by default, which delay is increased one day for every ten miles the defendants' residence is distant from New Orleans, the place where the court is held.

And that you make due return hereof on the first Monday of March, 1874.

Witness the Hon. Nathan Clifford, associate justice of the Supreme Court of the United States of America, at the city of New Orleans, this 10th day of February, A. D. one thousand eight hundred and seventy-four, and of the Independence of the United States of America the 98th year.

[SEAL.] (Signed) F. B. VINOT,
D'y Cl'k.

10 *Marshal's return.*

Received, February 10th, 1874, by the U. S. marshal, and on the 13th day of same month and year served a copy of within citation and accompanying petition on the Jefferson City Gas Light Co. named herein, by handing the same to Jos. Hernandez, in this city.

New Orleans, Feb'ry 20th, 1874.

(Signed) S. W. REED,
D'y U. S. Marshal.

Citation to the city of Carrol'ton.

The President of the United States of America to the marshal of the district of Louisiana, greeting:

FREEMAN CLARKE
vs.
JEFFERSON CITY GAS LIGHT COMPANY ET ALS. } No. 7142.

You are hereby commanded to summon the city of Carrol'ton, through its proper officer, to comply with the demand of Freeman Clarke, a citizen of the State of New York, contained in the petition, of which
11 a copy accompanies this citation, or to deliver its answer to the same in the office of the clerk of the circuit court of the United States, fifth judicial circuit, and district of Louisiana, in the city of New Orleans, in ten days after service hereof, or judgment will be rendered against it by default, which delay is increased one day for every ten miles the defendants' residence is distant from New Orleans, the place where the court is held, and that you make due return hereof on the first Monday of *Monday of* March, 1874.

Witness the Hon. Nathan Clifford, associate justice of the Supreme Court of the United States of America, at the city of New Orleans, this 10th day of February, A. D. one thousand eight hundred and seventy-four, and of the Independence of the United States of America the 98th year.

[SEAL.] F. B. VINOT,
D'y Clk.

Marshal's return.

Received, February 10th, 1874, by the U. S. marshal, and on the 16th day of same month and year served a copy of within citation
12 and accompanying petition on the city of Carrol'ton named herein, by handing the same to A. G. Brice, the mayor of said city.

New Orleans, February 20th, 1874.

(Signed) S. W. REED,
D'y U. S. Marshal.

Exception and answer of the city of Carrol'ton.—Filed February 26th, 1874.

FREEMAN CLARKE
vs.
JEFFERSON CITY GAS LIGHT CO. ET AL. } No. 7142.

United States circuit court for the fifth judicial circuit and district of Louisiana.

And now comes the city of Carrol'ton herein cited and excepts to the maintenance of this suit, because neither bonds or coupons on the property of complainant, but the property of the Jefferson City Gas Light Company, and complainant has no interest therein.

Second. That suit was instituted for payment said coupons, or part thereof, against the city of Carrol'ton, as will appear by the record No. 3995 of the docket of the second judicial district court, that
13 the decision in said suit was adversely to said Jefferson City Gas Light Company and is res adjudicata.

Now, if these exceptions are overruled, and not otherwise, then this defendant pleads the general issue, and in addition declares that the city of Carrol'ton is in no wise bound for said bonds or coupons, or any part thereof.

1st. Because the said city of Carrol'ton was not authorized to issue bonds or other evidences of indebtedness, and that the said bonds were issued by said officers of the city of Carrol'ton in violation of its charter and the rights of its citizens, and that the city is not bound either for the principal or interest of the same.

2d. That said ordinance and all contracts made in pursuance thereof are wholly illegal, null, and void, and that of the city of Carrol'ton had been expressly authorized to issue said bonds and coupons, (which is denied,) that the council never made an ordinance contracting said debt, any provision to pay either the principal or interest of said debt, as required by law.

(Signed) W. T. SCOTT,
Att'y for City of Carrol'ton.

14 *Answer and call in warranty of Jefferson City Gas Light Company.—Filed February 26th*, 1874.

United States circuit court for fifth circuit and district of La.

FREEMAN CLARKE
vs.
JEFFERSON CITY GAS LIGHT COMPANY ET AL. } No. 7142.

Now comes the Jefferson City Gas Light Company, made defendant herein, by the undersigned counsel, and pleads a general denial to plaintiff's claim, and, further answering, says:

That the coupons sued on are the evidence of an indebtedness on the part of the city of Carrol'ton, the other defendant in this case, the consideration of which was the compliance on the part of this respondent with a contract entered into between the said city of Carrol'ton and this respondent, that this respondent should, within six months of the date of said contract, lay an eight-inch gas-main from the lower line of the city of Carrol'ton up S't Charles street to the Carrol'ton railroad depot on one side of said street, and a three-inch main from lower line up the other side of S't Charles street to Canal avenue, and up Levee
15 street, from the aforesaid depot, to the upper line of the city of Carrol'ton, with the necessary branches, boxes, &c., and as soon as practicable lay branch mains, pipes, &c., out Carroll avenue, Dublin, Washington, and the other principal streets of said city, in order to light said streets and supply the citizens with gas-light, and also provide and erect the necessary lamp-posts along the said line.

That the said contract is evidenced by the ordinance copied into plaintiff's petition, and by the contract entered into in pursuance thereof, dated the eighteenth day of January, 1871, a duly certified and authentic copy of which will be produced on the trial of this cause.

That this respondent avers that it complied with the terms of said contract, and made the works therein designated; that the said city of Carrol'ton accepted the said works, as a compliance therewith, issued the bonds according to said contract, has had the use and benefit of said works ever since, and on default of payment of the principal of said bonds at their maturity by this respondent will become the
16 owner of said works; and therefore the said city of Carrol'ton is

liable to pay the amount of the interest on said bonds as the same matures, for which the coupons sued on were issued as convenient evidences of the same, the said city having received value thereof in the use and benefit conferred by said works constructed under the terms of said contract.

Wherefore respondent prays that the said city of Carrol'ton be called in warranty and cited as warrantor in this case, and be condemned to pay to this respondent any sum of money that this respondent may be adjuged or decreed to pay to the plaintiff, and all costs and expenses in this behalf expended, and for general relief, &c.

(Signed) SEMMES & MOTT,
(D'o) FRANK N. BUTLER,
Att'ys of Def't Gas Co.

Citation in warranty.—Issued February 26th, 1875.

The President of the United States of America to the marshal of the district of Louisiana, greeting:

17 FREEMAN CLARKE
vs.
JEFFERSON CITY GAS LIGHT COMPANY ET AL. } No. 7142.

You are hereby commanded to summon the city of Carrol'ton as warrantor to comply with the demand of the Jefferson City *of* Gas Company, contained in the answer and call in warranty, of which a copy accompanies this citation, or to deliver its answer to the same in the office of the clerk of the circuit court of the United States, fifth judicial circuit, and district of Louisiana, in the city of New Orleans, in ten days after service hereof, or judgment will be rendered against it by default, which delay is increased one day for every ten miles the defendants' residence is distant from New Orleans, the place where the court is held.

And that you make due return hereof on the first Monday of April, 1874.

Witness the Hon. Nathan Clifford, associate justice of the Supreme Court of the United States of America, at the city of New Orleans, this 26th day of February, A. D. one thousand eight hundred and seventy-four, and of the Independence of the United States of America the 98th year.

18 [SEAL.] (Signed) F. B. VINOT,
D'y Clerk.

Marshal's return.

Received, February 28th, 1874, by the U. S. marshal, and on the 7th day of March of same year served a copy of within citation and accompanying petition in warranty on the city of Carrol'ton, named herein, by leaving the same at the office of the mayor, in the hands of W. P. Green, secretary, the mayor being absent at the time of service, which I learned by interrogating the within-named W. P. Green.

New Orleans, March 7th, 1874.

(Signed) S. W. REED,
D'y U. S. Marshal.

Supplemental petition.—Filed March 26th, 1875.

To the honorable the judges of the United States circuit court for the fifth judicial circuit, and district of Louisiana:

The amended and supplemental petition of Freeman Clark, plaintiff herein, respectfully represents that, since the filing of the original petition on February 7th, 1874, the legislature of the State of Louisiana has passed an act, being act No. 71, promulgated March 25th, 1874, entitled "An act to annex the city of Carrol'ton to the city of New Orleans, and for other purposes," &c., and repealing the act incorporating the city of Carrol'ton.

19

Represents that, by section 5 of said act, the said city of New Orleans is made liable for the Jefferson City gas-light bonds, from which the coupons now sued on have been detached, and that thereby plaintiff's cause of action, as stated in original petition, now exists against the said city of New Orleans, and said city is now liable to plaintiff in solido with the Jefferson City Gas Light Company for the amount of the coupons described in said petition, amounting to the sum of seven thousand two hundred dollars, and with interest from judicial demand.

Represents that said city of New Orleans is a corporation created by, and existing under, the laws of the State of Louisiana, and is situated in said State.

Premises considered, petitioner prays that he be allowed to file this amended petition; that a copy thereof be served on Joseph Hernandez, president of the Jefferson City Gas Light Company; that the city of New Orleans be cited to appear and answer this and the original petition; and due proceedings that petitioner have judgment in solido against the Jefferson City Gas Light Company and the city of New Orleans for the sum of seven thousand two hundred dollars, with interest at 5 per cent. from judicial demand, and for costs and general relief.

20

(Signed) HAYS & NEW, *Att'y'*.

Order.

Let this amended and supplemental petition by filed.

(Signed) W. P. WOODS, *Judge.*

Citation on supplemental petition to the city of New Orleans.—Issued March 26th, 1875.

The President of the United States of America to the marshal of the district of Louisiana:

FREEMAN CLARKE
vs.
JEFFERSON CITY GAS LIGHT CO. ET AL. } No. 7142.

21

You are hereby commanded to summon the city of New Orleans, citizen of the State , to comply with the demand of Freeman Clarke, citizen of the State of , contained in the original petition and the amended and supplemental petition, of which copies accompany this citation, or to deliver its answer to the same in the office of the clerk of the circuit court of the United States, fifth judicial circuit, and district of Louisiana, in the city of New Orleans, in ten days after service hereof,

or judgment will be rendered against it by default, which delay is increased one day for every ten miles the defendants' residence is distant from New Orleans, the place where the court is held.

And that you make due return hereof on the first Monday of April, 1874.

Witness the Hon. Morrison R. Waite, Chief-Justice of the Supreme Court of the United States of America, at the city of New Orleans, this 26th day of March, A. D. one thousand eight hundred and seventy-four, and of Independence of the United States of America the 98th year.

[SEAL.] (Signed) F. B. VINOT,
D'y Cl'k.

Marshal's return.

22 Received March 27th, 1874, by the U. S. marshal, and on the 28th day of March, 1874, served a copy hereof, with the original and supplemental petitions accompanying the same, on the city of New Orleans, by handing them to E. W. Halsey, secretary of the mayor of the city of New Orleans, at the office of said mayor, in person, in this city.

New Orleans, March 30th, '74.

S. W. REED,
D'y Marshal.

Answer of the Jefferson City Gas Light Co. to supplemental petition and call in warranty to the city of New Orleans.—Filed March 26th, 1874.

U. S. circuit court for Louisiana.

FREEMAN CLARKE
vs.
JEFFERSON CITY GAS LIGHT COMPANY ET AL. } No. 7142.

Now comes the Jefferson City Gas Light Company, one of the defendants, through its undersigned attorneys, and for answer to the supplemental and amended petition filed by the plaintiff says that it denies generally all the allegations therein contained tending in any way to show responsibility on the part of this respondent.

Wherefore it prays to be hence dismissed with costs.

23 And this respondent, further answering, saith, that by the contract with and ordinance of the city of Carrrol'ton, and the statute of the State of Louisiana, referred to and set forth by the plaintiff in his original and supplemental petition, the city of New Orleans is liable, and is boun to hold the respondent harmless from any claim of the plaintiff, if any he has, which is denied, against this respondent.

Wherefore this respondent prays that the city of New Orleans be called in warranty, and cited to answer this call in warranty, and be condemned to hold this respondent harmless against any judgment the plaintiff may obtain against this respondent; and, furthermore, that the city of New Orleans be condemned to pay and satisfy any judgment the plaintiff may obtain this respondent, and on that, on this respondent paying all such judgment obtained against it on this case, it be homologated to the right of the plaintiff, and authorized to issue execution for the amount so paid, with interest and costs, and for general relief.

(Signed) SEMMES & MOTT,
(D'o) FRANK N. BUTLER,
Att'ys of Jeff. City Gas L. Co.

Citation in warranty to the city of New Orleans.

The President of the United States of America to the marshal
24 of the district of Louisiana, greeting:

FREEMAN CLARK
vs.
THE JEFFERSON CITY GAS LIGHT COMPANY et al. } No. 7142.

You are hereby commanded to summon the city of New Orleans, as warrantor, citizen of the State of , to comply with the demand of the Jefferson City Gas Light Company, citizen of the State of , contained in the answer and call in warranty, of which a copy accompanies this citation, or to deliver its answer to the same, in the office of the clerk of the circuit court of the United States, fifth judicial circuit, and district of Louisiana, in the city of New Orleans, in ten days after service hereof, or judgment will be rendered against it by default; which delay is increased one day for every ten miles the defendants' residence is distant from New Orleans, the place where the court is held.

And that you make due return hereof on the first Monday of April, 1874.

Witness the Hon. Morrison R. Waite, Chief-Justice of the Su-
25 preme Court of the United States of America, at the city of New Orleans, this 26th day of March, A. D. one thousand eight hundred and seventy-four, and of the United States of America the 98th year.

[SEAL.] (Signed) F. B. VINOT,
D'y Clerk.

Marshal's return.

Received, March 27th, 1874, by the U. S. marshal, and on the 28th day of March, 1874, served a copy hereof, with answer and call in warranty accompanying, on the city of New Orleans, by handing them to E. W. Halsey, esq., secretary of the mayor of said city, at the office of the mayor, in person, in this city.

March 30th, '74.

(Signed) S. W. REED,
D'y U. S. Marshal.

Answer of the city of New Orleans to the amended and supplemental petition and call in warranty.—Filed April 17th, 1874.

FREEMAN CLARKE
vs.
JEFFERSON CITY GAS LIGHT CO. } 7142.

And now before the court comes the city of New Orleans, and without waiving the exception filed by the city of Carrol'ton, and which this respondent requires shall be first disposed of, for answer to the
26 amended and supplemental petition of plaintiff, and to the call in warranty filed by the Jefferson City Gas Light Company, she denies each and every allegation and averment set forth and contained in the aforesaid amended petition and call in warranty, except such as may be hereinafter admitted, or which it may be to the interest of this respondent to admit.

And for further and special answer this respondent says that the city of Carrol'ton was without legal power or authority to issue the bonds and coupons of interest referred to in plaintiff's petition; that her action in the premises was ultra vires and void; and that neither a

legal nor a moral obligation vested upon the said city to pay the aforesaid bonds or coupons of interest, or any part or portion thereof.

Further answering, says that the legislature of the State of Louisiana was without the power and authority to require this respondent to pay the bonds and coupons of interest aforesaid; and that any provision in the act referred to in plaintiff's petition, or in any law or statute of the State having that effect, is violative of the fundamental law
27 of the land, and for that reason and otherwise is absolutely null and void, and without force and effect.

Wherefore this respondent prays that judgment may be rendered in her favor and against the said Freeman Clarke and Jefferson City Gas Light Company, and that this appearer may recover costs and have general relief in the premises.

(Signed) GEORGE S. LACEY, *City Att'y.*
(Signed) H. H. WALSH, *Ass't City Att'y.*

Note of evidence.—Filed May 3rd, 1875.

FREEMAN CLARKE
vs.
JEFFERSON CITY GAS LIGHT COMPANY ET AL. } No. 7142.

Plaintiff offered 180 coupons and bond marked "A," with endorsements thereon; also admission marked "B;" also acts of 1872, No. 2, p. 30, sect. 5; also acts 1874, p. 120, sec. 5, No. 71; also deposition of Clark on file, said deposition filed 2 Nov'r, '74.

Def'ts offer a't No. 277, statutes 1859, p. 219.

28 *Admission of facts.—Filed May 3rd, 1875.*

U. S. circuit court.

FREEMAN CLARKE
vs.
JEFFERSON CITY GAS LIGHT COMPANY ET AL. } No. 7142.

It is admitted that the ordinance set forth in the petition, and the contract therein relied on, were actually passed by the council of Carrol'ton, and the contract entered into, and the work performed by the gas company, as alleged.

(Signed) W. T. SCOTT,
Att'y for the City of Carrol'ton.

Hearing and submission of case.—Extract from minutes, April term, 1875.

NEW ORLEANS, *Monday, May 3rd, 1875.*

Court met pursuant to adjournment.
Present, Hon. W. B. Woods, circuit judge.

FREEMAN CLARK
vs.
JEFFERSON CITY GAS LIGHT CO. ET AL. } No. 7142.

This cause was called for trial. Hays and New for plaintiff; Semmes & Mott and B. F. Jonas for defendants; when the following
29 jurors were called and sworn to try the issue:

1. Marcellus Lara.
2. T. Fondal.
3. H. Laroche.
4. Frank Romero.
5. Morse Depas.
6. H. L. La Tourette.
7. George Baldy.
8. Jno. Devonshire.
9. Philip Schaefer.
10. C. W. Foster.
11. Jno. Adams.
12. Tho's Hutchings.

And the jury being complete, the trial proceeded, and after hearing the pleadings, evidence, and argument, and receiving a charge from the court, Geo. Baldy was appointed foreman of the jury, and they retired to consider on their verdict.

Verdict.—Extract from minutes of the 3rd May, 1875.

FREEMAN CLARKE
vs.
JEFFERSON CITY GAS LIGHT COMPANY ET AL. } No. 7142.

After due deliberation, the jury returned into court and delivered the following verdict, to wit:

NEW ORLEANS, *May 3rd*, 1875.

Verdict for plaintiff against the Jefferson City Gas Light Company and the city of New Orleans, La., in solido, for the sum of $7,200, with interest at 5% from date of judicial demand, and in favor of the
30 Jefferson City Gas Light Company, against the city of New Orleans, for the same amount and interest.

(Signed) GEO. BALDY, *Foreman.*

Whereupon it is ordered that the same be recorded.

Judgment.—Extract from judgment docket, April term, 1875.

NEW ORLEANS, *Monday, May 3rd*, 1875.

Court met pursuant to adjournment.
Present, Hon. W. B. Woods, circuit judge.

FREEMAN CLARK
vs.
JEFFERSON CITY GAS LIGHT COMPANY ET AL. } No. 7142.

By reason of the verdict and in accordance therewith, it is ordered, adjudged, and decreed that the plaintiff, Freeman Clarke, do have and recover from the Jefferson City Gas Light Company and from the city of New Orleans in solido the sum of seven thousand and two hundred dollars, with 5% interest thereon from judicial demand till paid, and costs of suit.

It is further adjudged and decreed that on the call in warranty
31 the said Jefferson City Gas Light Company do recover from the city of New Orleans a like sum of seven thousand two hundred, with like interest and costs.

Judgment rendered May 3rd, 1875.
Judgment signed May 7th, 1875.

(Signed) W. B. WOODS, *Judge.*

Bill of exception of Jefferson City Gas Light Company.—Filed May 3rd, 1875.

U. S. circuit court, dist. of La.

FREEMAN CLARKE
vs.
THE JEFFERSON CITY GAS LIGHT CO. AND others. } No. 7142.

Be it remembered that on the trial of this cause the plaintiff, to sustain the issue on his part, offered in evidence the coupons upon which the

suit was brought and one of the bonds from which said coupons were cut, which was shown to be identical same in number with the other bonds from which the coupons in suit were cut, (a copy of one of said coupons and of said bond being hereto attached, marked "A" and "B," respectively, and made part of the bill of exceptions, (inscribed
32 pages 36 and 37;) and it being admitted by counsel for defendants that the contract referred to in the petition between the said city of Carrol'ton and the said Jefferson City Gas Light Company had been performed and the said bonds issued by the city of Carrol'ton to the said Jefferson City Gas Light Company, and received by the latter company, and defendants, by their counsel, having admitted that each of said bonds from which said coupons were cut bore on their face and indorsement in these words, "The Jefferson City Gas Light Company guarantees the payment of the principal and interest of this bond to the holder thereof, John Lockwood, president," and that the signature of John Lockwood to said endorsement was genuine, and that at the time of signing said indorsement the said John Lockwood was president of the said The Jefferson City Gas Light Company and the plaintiff having given evidence tending to show that said bonds so indorsed were sold by said Lockwood, president, through brokers in New York, to the
33 plaintiff for a valuable consideration, and the execution of said indorsement by the said Jefferson City Gas Light Company, by its president, the said John Lockwood, not having been specifically denied by the answer of the said Gas Light Company, either under oath or the corporate seal of said company:

Thereupon the court charged the jury that (under the pleadings in this case) the evidence and admissions hereinbefore recited made a prima-facie case of liability against said Jefferson City Gas Light Company in favor of the plaintiff, and that it was not necessary, in order to make such prima-facie case, for the plaintiff to show by other evidence that said John Lockwood, the president of the said Jefferson City Gas Light Company, was authorized by said company to make said indorsement of said bonds.

To which charge of the court the defendant, the Jefferson City Gas Light Company, by its counsel, then and there excepted, and prayed that its said exception be incorporated in the record by bill of ex-
34 ceptions signed and sealed by the judge, all of which is now here done accordingly this 3rd day of May, 1875.

[SEAL.] (Signed) W. B. WOODS, *Judge.*

Bill of exception of the city of New Orleans.—Filed May 3rd, 1875.

In the circuit court of the United States, 5th circuit & district of La.

FREEMAN CLARKE
vs.
THE JEFFERSON CITY GAS LIGHT COMPANY, and the city of Carrol'ton, and city of New Orleans. } No. 7142.

Be it remembered that on the trial of this cause, the jury being at the bar and before they had retired, the petition of plaintiff and the contract annexed thereto and the bond offered in evidence, all of which are made parts of this bill, (marked "Exhibits A, B, C," inscribed on pages 36 & 37,) shewing that the coupons sued upon were taken from and originally formed part of certain bonds issued by the late city of

Carrol'ton to the Jefferson City Gas Light Company; and it further appearing from the ordinances of the said city of Carrol'ton, offered in evidence, (which are also made part of this bill, marked "Ex-
35 hibits D & E," inscribed on pages 38 D, 41 E,) that no provision was made in said ordinances, under which said bonds were issued, for the payment of the principal of the same, and there being no evidence that the legislature had authorized the said city of Carrol'ton to issue the said bonds, and counsel for plaintiff having offered in evidence act No. 2 of the State legislature of the session of 1872 and act No. 71 of the session of 1874, to shew a subsequent ratification by the legislature of the issue of the said bonds, (inscribed act No. 2 of 1871, pages 44, act No. 71 of 1874, pages 51,) the counsel for the city of New Orleans requested the court to charge:

That the legislature had no power to ratify or legalize the issuance of said bonds by the said city of Carrol'ton, because said bonds were issued to and in aid of the Jefferson City Gas Light Company, which is a private corporation for the manufacture and sale of gas, and because, by issuing said bonds, the said city of Carrol'ton created a debt without providing in the same ordinance or otherwise the means of paying the principal thereof.

36 But the court refused to charge the jury as requested, and on the contrary charged the jury that the legislature had the power to legalize the said issue of bonds by the said city of Carrol'ton.

To which ruling of the court, in refusing the charge as requested and in charging as above set forth, counsel for the city of New Orleans then and there excepted and tendered this bill of exceptions, which is allowed, sealed, and signed

New Orleans, May 3rd, 1875.

[SEAL.] (Signed) W. B. WOODS, *Judge.*

Exhibit A, referred to in bills of exceptions of the Jefferson City Gas Light Company and the city of New Orleans.—Filed May 3rd, 1875.

No. 1. CITY OF CARROL'TON, $1,000.

A. State of Louisiana. No. 1.

Know all men by these presents that the city of Carrolton will pay to the Jefferson City Gas Light Company or order the sum of one thousand dollars, in current money of the United States, in thirty years from the date thereof, with interest at the rate of eight per cent. per annum,
37 payable semi-annually on the first day of January and first day of July of each year, at the office of the city treasurer, on the *the* delivery of interest-coupon attached to said bond. For the payment of the principal an' accruing interest on this bond the faith and credit of the city of Carrol'ton is pledged, as set forth in the ordinance printed on the reverse hereof, passed and approved January 11th, 1871.

In testimony whereof the seal of the city of Carrol'ton is hereto affixed and the signatures of the mayor, controller, and treasurer appended in writing on the first day of July, 1871.

[SEAL.] (Signed) T. A. MARTIN, *Controller.*
(Signed) FREDERICK KERN, *Treasurer.*
(Signed) D. M. BISBEE, *Mayor.*

(Written across the face:) The Jefferson City Gas Light Company guarantee the payment of the principal and interest on this bond to the holder thereof.

(Signed) JOHN LOCKWOOD,
President.

Exhibit B.

Coupon. $40.00.

The city of Carrol'ton will pay to bearer forty dollars at the office of the city treasurer, being six months' interest due July 1st, 1874, on bond No. 1, for one thousand dollars.

A.

(Signed) FREDERICK KERN,
Treasurer.

(Across the face:) 6.

38 *Exhibit D, referred to in bill of exception of the city of New Orleans.*

An ordinance to provide for the payment of the bonds and interest on the same, as authorized by the provisions of the new charter of the city of Carrol'ton bearing date the twelfth day of February, 1872, providing for the funding of the outstanding debts and obligations of the said city created for the wharves, streets, gas, and other improvements of said city.

SECTION 1. Be it ordained by the mayor and council of the city of Carrol'ton, That there shall be assessed and levied a tax on all real and personal property within the limits of said city, as per amended charter, bearing date the twelfth day of February, 1872, and to be collected annually, one-half of one per cent. ($\frac{1}{2}$ per cent.) for the purpose of paying the principal and interest of (200) two hundred bonds of ($1,000$\frac{00}{100}$) one thousand dollars each, or as much thereof as may be required to fund the city debt, and to be issued under this ordinance and running for (30) thirty years, the proceeds of the same to be applied for the purpose of funding the city indebtedness.

39 SECTION 2. Be it further enacted, That the aforesaid tax of one-half of one per cent. shall be assessed and levied on the assessment-rolls of 1872, and shall not be exigible or collectable before the year 1873, and shall then be collected in the same manner as other taxes and in accordance with the city charter in relation thereto.

SECTION 3. Be it further enacted, etc., That the treasurer of the city of Carrol'ton shall annually set aside, after paying the interest as provided semi-annually on said bonds, a sufficient amount to pay the principal at maturity: And provided further, That any failure or neglect upon the part of the treasurer of said city to comply with the provisions of said ordinance shall be a sufficient cause for his removal from office.

SECTION 4. Be it further enacted, That Zuinglius McKay, mayor of the said city, and chairman of the finance and the chairman of the streets and landings committees, be, and are hereby, authorized and empowered to forthwith negotiate a loan, sufficient in amount and as

40 heretofore provided for in this ordinance, to liquidate the indebtedness of said city; and that the mayor, Zuinglius McKay, is hereby authorized and empowered to have engraved and printed (200) two hundred bonds of ($1,000) one thousand dollars each, with coupons attached, and to warrant one the treasurer for the payment of the printing and engraving of the said bonds, and to issue the necessary amount of bonds payable in (30) thirty years required to meet said loan thus negotiated.

SECTION 5. That this ordinance take effect from and after its passage.

I certify the above to be a true and correct copy of an ordinance

adopted at a meeting of the council of the late city of Carrol'ton, held April 10th, 1872, as appears from the written proceedings of said council, page 242, which are of record in this office.

(Signed) J. G. BROWN,
Administrator of Public Accounts.

41 *Exhibit E, referred to in the bill of exception of the city of New Orleans.*

An ordinance to facilitate the introduction of gas within the limits of the city of Carrol'ton, to provide for making a contract with the Jefferson City Gas Light Company in relation thereto, and to authorize the issuance of bonds, etc.

Whereas, under an act of the legislature of the State approved March 9th, 1869, the Jefferson City Gas Light Company is given the exclusive privilege of supplying gas-light in the territorial limits of the city of Carrolton; and whereas the said Gas Light Company proposes to lay pipes and introduce gas in the city under certain conditions: Therefore,

SECTION 1. Be it ordained, etc., That the mayor be, and is hereby, authorized to enter into a contract by public act with the said Jefferson City Gas Light Company, as follows:

The said Jefferson City Gas Light Company shall, within six months from the date of contract, or as soon as can be, lay an eight-inch gas-main from the lower line of the city of Carrolton up S't Charles
42 street to the Carrol'ton railroad depot, on one side of said street, and a three-inch gas-main from Lower Line up the other side of S't Charles street to Canal avenue, and up Levee street from the aforesaid depot to the Upper Line of the city of Carrol'ton, with the necessary branches, boxes, etc., and, as soon as practicable, shall lay branch mains, pipes, etc., out Canal avenue, Dublin, Washington, and the other principal streets, in order to light the said streets and supply the citizens with gas-light. Also the said company shall provide and erect the necessary lamp-posts along the said line.

That in consideration of the foregoing, that the city of Carrol'ton, through the mayor, shall provide and issue forty-five one-thousand-dollar bonds of the city of Carrol'ton, payable in thirty years, with interest at eight per cent., payable semi-annually to the order of the said Gas Light Company, which bonds shall be dated and delivered to the said Gas Light Company when the pipes, mains, &c., are laid and the lamps-
43 posts erected along the line of S't Charles street and Levee street, from Lower Line street to Upper Line street, and gas turned on for use, provided the said company shall guarantee the said bonds and assume the payment of the principal thereof at maturity: And provided further, That if at maturity the said company shall fail to pay said bonds, then the said city shall pay the same and become the owner of all the gas-works, main pipes, posts, etc., then lying and being within the present limits of the city of Carrol'ton.

That the treasurer of the city of Carrol'ton shall specially appropriate and set aside, in lawful money, every month, such amount or proportion of the taxes and dues of said city as shall be necessary to meet the interest on said bonds and such gas-bills as may accrue against the said city. And that the mayor, in said act, shall be authorized to make such other agreements, not inconsistent herewith, as may be necessary to carry out the purposes of the ordinance and make the said con-
44 tract legal and conclusive on both parties thereto.

SECTION 3. Be it further ordained, etc., That this ordinance shall take effect from and after its passage.

Passed January 11th, 1871.

(Signed) T. A. MARTIN, *Controller.*
(do.) D. W. F. BISBEE, *Mayor.*
(Signed) JOHN LOCKWOOD,
President Jefferson City Gas Light Company.

Act No. 2 of 1871 of the State of L'a, referred to in bill of exception of the city of New Orleans.

No. 2.—An act to amend an act entitled "An act to incorporate the city of Carrol'ton," approved March 17th, 1859, and acts supplementary thereto.

SECTION 1. Be it enacted by the senate and house of representatives of the State of Louisiana in general assembly convened, That the first section of an act entitled "An act to incorporate the city of Carrol'ton" be, and the same is hereby, amended so as to read:

ACT TO INCORPORATE THE CITY OF CARROL'TON.

SECTION 1. Be it enacted by the senate and house of representatives of the State of Louisiana in general assembly convened, That the territory and inhabitants within the following limits, to wit: Begin'ing
45 at the Mississippi River, on the present Upper Line of the city of New Orleans, on the Lower Line street of Carrol'ton, following the upper line of the city of New Orleans to the northern limit of the parish of Jefferson; thence following the northern limit of said parish of Jefferson, and the boundary of said parish, with the parish and city of New Orleans to the Labarre road; thence along the centre of said road to the Mississippi River, and thence following the river back to the place of beginning, shall be a corporation and body politic, with perpetual succession, by the name of the city of Carrol'ton.

SECTION 2. Be it further enacted, &c., That section five of said actbe, and the same is, so amended and re-enacted as to read:

RULES AND REGULATIONS OF SAID CORPORATION.

SECTION 5. Be it further enacted, &c., That the said mayor and council, when duly organized, are empowered to ordain, establish, and cause to be carried into effect and execution all such by-laws, ordinances, resolutions, rules, and regulations as they may deem expedient for the good government of said corporation which are not contrary to the Constitution and laws of the State or the United States.

46 They are empowered and authorized to levy and collect taxes and charges, in such manner as they may deem expedient, on all steamboats, ships, flat-boats, rafts, and water-craft of every description landing at the levee, batture, or wharves in front of said city; also upon all carriages, omnibuses, carts, drays, wagons, timber-wheels, and every other vehicle of whatever kind within said city. They are authorized and empowered to lay and collect an annual tax upon all kinds of property, real or personal, and upon stores, trades, professions, or occupations, to such amount as they may deem expedient: Provided, That in the imposition, assessment, and collection of any of said taxes or charges equality shall be observed and that the imposition thereof is not contrary

to law: And provided further, That a majority of all the members composing the mayor and council concur therein.

They are empowered to pass ordinances for the abatement of nuisances and the arrest of offenders, and to dispose of vagrants.

The present mayor and council are authorized and empowered
47 to fund the outstanding debts and obligations of the said city of Carrolton, created for the wharves, streets, gas, and other improvements of said city, by issuing bonds of said city in such sums as said council may deem advisable, running for thirty years, with interest at eight per cent., payable semi-annually: Provided, That any ordinance providing for the issuance of bonds shall provide for the payment of principal and interest of such bonds by levying such annual tax as will provide a sufficient sum to pay the interest of said bonds as the same may come due, and provide a sufficient sinking fund to meet the principal at maturity: And provided further, That the mayor shall have the power to veto any ordinance or resolution or any specific appropriation not required by the law of the State, by giving in writing, at or before the first regular meeting of the council thereafter, his reasons against the same; otherwse he shall sign all ordinances and resolutions passed in due form by the council; and such ordinances and resolutions
48 shall thereupon have the force of law; and six numbers (members) of the council voting for any vetoed ordinance, resolution, or appropriation shall pass the same, the objection of the mayor notwithstanding.

SECTION 3. Be it further enacted, &c., That section ten of said act be and the same is amended and re-enacted so as to read:

REPAIR OF LEVEES, STREETS, ETC.

SECTION 10. Be it further enacted, &c., That the roads, streets, levees, wharves, and public places and thoroughfares in said city shall be under the entire control of said mayor and council; and they may and shall pass such ordinances for the regulation thereof as they may deem expedient: Provided, That no ordinance in relation to those places or the levees shall interfere with the rights of the public thereto as laid down in the civil code and laws of this State. They are hereby vested with the power to repair, alter, and enlarge said levees, and, if necessary for the safety of the inhabitants, to make a new levee in front of any part of said city, in such places and manner as the exigency of the case,
49 in their discretion, may require, and two-thirds of the said mayor and council concurring are empowered to levy and collect a special tax on the real estate and personal property in said city to pay all expenses and costs arising therefrom. They are empowered to curb, gutter, grade, pave, shell, or plank sidewalks, streets, or public thoroughfares, and charge the front owners on such places the one-half costs for sidewalks, including curbs and gutters and one-half of the whole costs for streets, except crossings, and to pay for the one-third of the whole costs for streets and the crossings and corners.

BONDS FOR SAME.

They are authorized and empowered to issue improvement-bonds running for ten, twenty, or thirty years, bearing interest at not exceeding eight per cent. per annum: Provided, That all improvement of streets shall be done under contract, upon terms to be made by the said mayor and council; and said mayor and council are empowered to make

wharves, plant tie-posts, and regulate the port of said city, and also to cause vacant lots to be fenced and filled up to the grade of the
50 city at the expense of the owners, when necessary.

MAYOR AND COUNCIL. TERM OF SERVICE.

SECTION 4. Be it further enacted, &c., That the present mayor and members of the council shall serve the full term for which they were elected to, respectively: And provided further, That any vacancy caused by death, resignation, or otherwise, the governor shall have full power to fill said vacancy for the unexpired term of said office.

(Signed) O. H. BREWSTER,
Speaker of the House of Representatives.

(Signed) P. B. S. PINCHBACK,
Lieutenant-Governor and President of the Senate.

A true copy.

F. J. HERRON,
Secretary of State.

The foregoing act received at my office February 12th, 1872, having been presented to the governor of the State of Louisiana for his approval, and not having been returned by him to the house of the general assembly in which it originated within the time prescribed by the constitution of the State of Louisiana, has become a law without his approval.

(Signed) F. J. HERRON,
Secretary of State.

51 *Act No. 71 of 1874, referred to in bill of exception of the city of New Orleans.*

No. 71.—An act to annex the city of Carrolton to the city of New Orleans; to provide for the transfer of certain transcripts from the office of the recorder, the transfer of books, papers, documents, and property of the city of Carrolton, and also the public schools to the city of New Orleans; to provide for the debt of Carrolton; creating the seventh district of the city of New Orleans and a municipal court, a sanitary district, and repealing the act incorporating the city of Carrolton.

SECTION 1. Be it enacted by the senate and house of representatives of the State of Louisiana in general assembly convened, That all that portion of the parish of Jefferson being and lying below the centre of Upper Line street of the city of Carrolton, commencing at Mississippi River, and extending northwardly along the centre of said street to its terminus, and thence along the centre of the line of the New Orleans and Carrolton Railroad to Lake Pontchartrain, shall be and con-
52 stitute the upper boundary line of the parish of Orleans and the city of New Orleans, and all that portion of the city of Carrolton thus detached from the parish of Jefferson and added to the city of New Orleans and parish of Orleans shall be governed by the mayor and administrators of the city of New Orleans in accordance with existing laws, except so far as not inconsistent with this act.

SECTION 2. Be it further enacted, etc., That the territory of the parish of Jefferson annexed by this act to the city of New Orleans shall

be and remain and constitute a part of the second judicial district of the State, and that the terms of court for the parish of Jefferson shall be holden at such place in the parish of Jefferson as may be designated by the police-jury, right bank, who are hereby authorized to establish the parish seat of said parish of Jefferson.

SECTION 3. Be it further enacted, etc., That immediately after the passage of this act it shall be the duty of the recorder of the parish of Jefferson to make out and deliver, within the shortest possible time, in good and substantial books or registers, with separate index to each—

53 First. For and unto the recorder of mortgages for the parish of Orleans true and correct transcripts of all mortgages, donations, marriage contracts, privileges, or other incumbrances that have been inscribed, and not erased, upon the records of mortgages of said parish of Jefferson since the creation of said records of mortgages, concerning or in any wise affecting any and all real property situated within the limits of that portion of the parish of Jefferson which is annexed by this act to the parish of Orleans.

Second. For and unto the register of conveyances of the parish of Orleans true and correct transcripts of all conveyances or alienations of any property, lying or being within the aforesaid limits, annexed to the parish of Orleans as aforesaid, that have been registered or inscribed upon the records of conveyances of said parish of Jefferson since the creating of said office of parish recorder or register of conveyances.

SECTION 4. Be it further enacted, etc., That the several transcripts, when so made and delivered and certified to be true and correct by said parish recorder, shall have the same validity, force, and effect as original inscriptions on the records of the parish of Jefferson,

54 and shall form and constitute a part of the records of the respective offices of the recorder and register of the parish to which the same is transferred; and the charges and expenses attendant upon the performance of said work shall be paid by the city of New Orleans, for which the same is done, as was allowed by law to the recorder of the parish of Jefferson for such transcripts when that portion now known as the sixth district was annexed to the city of New Orleans.

SECTION 5. Be it further enacted, etc., That all the rights, titles, and interest of the city of Carrolton, as now existing in and to all lands, tenements, hereditaments, bridges, ferries, streets, roads, wharves, markets, stalls, levees, landing-places, buildings, and other property of whatsoever description and wherever situated, and of and with all goods, chattels, money, effects, dues, demands, bonds, obligations, judgments and judgment liens, actions and rights of action, books, accounts, and vouchers, be, and they are hereby, vested in the city of New Orleans: Provided, That all estates, income funds, or property of every description now held in trust by said city of Carrolton, or which

55 shall have been specially pledged or affected by the payment of any debt, shall be held by the city of New Orleans, under this act, upon and for the same use, trust, limits, limitation, charities, and conditions as the same are now held; and the debt and all other indebtedness or liabilities of the city of Carrolton, including the funding and improvement bonds, and the bonds issued to the Jefferson City Gas Light Company, and known as the gas-bonds, and notes, interest coupons, wages, salary due or to become due, warrants or other species of obligations whatsoever, shall be assumed and paid by the city of New Orleans; and said city is hereby declared liable therefor: Provided

further, That all officers of said city of Carrolton shall continue as at present constituted to discharge the duties of their respective offices until this act of incorporation can be completed by putting into possession of the proper officers of the city of New Orleans the books, papers, records, documents, and other property now belonging to the city of Carrolton, and no longer, and after which time all the powers, rights,
56 privileges, and immunities possessed and enjoyed by the mayor and council of the city of Carrolton shall cease and terminate: And provided further, That the claims or vested rights of any person or persons or company or corporation of said city of Carrolton that have been granted, acquired, or received from or against said corporation of the city of Carrolton, or otherwise, shall not be interfered with, divested, or impaired by this act, nor by the city of New Orleans, without adequate compensation.

SECTION 6. Be it further enacted, etc., That that portion of the territory of the parish of Jefferson annexed as aforesaid to the city of New Orleans shall constitute the seventh district of said city of New Orleans, and for said seventh district there shall be established an additional municipal police-court, called the fifth municipal police court, and which shall have jurisdiction over all that portion of said city embraced in said seventh district; and the judge, clerks, and other officers of said court shall exercise all the rights, powers, and perform the
57 duties in the manner and form and receive the pay and emoluments as now determined and provided by law for the several judges, clerks, etc., of the existing municipal courts for the city of New Orleans; and the governor shall, immediately after the passage of this act, appoint and commission for the specified term by law a judge, clerks, and other officers of said court, as prescribed by law; and the present mayor, in his capacity as committing magistrate and recorder for said city of Carrolton, shall turn over and transfer without delay all books, records, etc., belonging to said mayor's court to the fifth municipal court created by this act.

SECTION 7. Be it further enacted, etc., That the State tax-collector of the parish of Jefferson shall, for the year 1874, continue for the said year 1874 to collect all State taxes in that portion of the territory detached from the parish of Jefferson and annexed to the city of New Orleans, the same as if no change had been made in the boundary and no territory had been detached from said parish of Jefferson.

SECTION 8. Be it further enacted, etc., That the act entitled "An act to incorporate the city of Carrolton," approved March 17th, 1859,
58 and all acts amendatory thereof, be, and the same are hereby, repealed.

SECTION 9. Be it further enacted, etc., That there shall be appointed for said seventh district created by this act one sa'itary inspector in the same manner as now provided by law, who shall have the same powers and perform the same duties and receive the same salary as the sanitary inspectors in and for the city of New Orleans.

SECTION 10. Be it further enacted, etc., That the control of the public schools of the city of Carrolton shall be transferred to, and be under and subject to, the control of the school board of the city of New Orleans, and said school board shall have the same power over said territory hereby annexed to the city of New Orleans for the government of the public schools as exercised by them in the city of New Orleans.

SECTON 11. Be it further enacted, etc., That the seventh district shall be divided into two wards, and shall be known as the sixteenth and seventeenth wards. The sixteenth ward shall extend from Lower Line

street to Carrolton avenue and from the Mississippi River to rear
59 boundary of the present city of Carrolton. The seventeenth ward shall be composed of all the territory annexed from the parish of Jefferson from Carrolton avenue to Upper Line street, city of Carrolton, and between said Carrolton avenue and the parish of Jefferson.

SECTION 12. Be it further enacted, etc., That all laws and parts of laws in conflict herewith be, and the same are hereby, repealed, and this act shall take effect from and after its passage.

(Signed) CHARLES W. LOWELL,
Speaker of the House of Representatives.

(Signed) C. C. ANTOINE,
Lieutenant-Governor and President of the Senate.

Approved March 23rd, 1874.

(Signed) WILLIAM P. KELLOGG,
Governor of the State of Louisiana.

A true copy.

(Signed) P. G. DESLONDE,
Secretary of State.

60 *Petition of the Jefferson City Gas Light Company for writ of error.—Filed May 19th, 1875.*

To the honorable W. B. Woods, circuit judge of the United States for the district of Louisiana:

The petition of the Jefferson City Gas Light Company, a corporation existing under the laws of the State of Louisiana, having its domicil' in the city of New Orleans, respectfully represents:

That at the April term of circuit court of the United States for the fifth circuit and district of Louisiana, in the suit No. 7142 on the docket thereof, a final judgment was rendered against your petitioner on the third day of May, 1875, in favor of Freeman Clark, and which judgment was signed and became final on the day of May, 1875, to the prejudice of your petitioner, which is irreparably injured thereby.

Your petitioner further represents that, according to the practice in the courts of the State of Louisiana, the said city of New Orleans
61 was made a codefendant in said suit with your petitioner, and also that your petitioner called the said city of New Orleans in warranty, as by the practice of the courts and as by law of the State of Louisiana allowed, and judgments were at the same time rendered against said city of New Orleans in favor of said Freeman Clark and in favor of your petitioner in warranty, and of which judgments in favor of said Freeman Clark against said city of New Orleans and in favor of your petitioner against said city of New Orleans in warranty your petitioner does not complain. That the said city of New Orleans cannot therefore be joined in the application.

Your petitioner prays for the allowance of a writ of error to be directed to the said court, that the judgment thereof may be re-examined, and that the same may be reversed for the manifest error apparent in the judgment aforesaid against your petitioner.

That your petitioner be allowed to give bond to the said Freeman Clark, which shall super*ceed* the execution of said judgment
62 against your petitioner; that citations be issued to the said Freeman Clark, for the purpose of bringing him to appear and answer the suit aforesaid, and that the said city of New Orleans be summoned,

so that it may have such relief, or take such course in the prosecution or defeat of this suit as it may be advised proper.

(Signed) SEMMES & MOTT,
Att'ys for Pet'r.

Order.

The writ of error herein prayed for is allowed, the defendants, the Jefferson City Gas Light Company, having given a bond, with approved security, to operate as a supersedeas to Freeman Clark, the plaintiff, in the suit; also to the other defendant, the city of New Orleans, in said suit as required.

May 19th, 1875.

(Signed) W. B. WOODS,
Circuit Judge of the United States for the District of Louisiana.

63 *Bond for writ of error.—Filed May 19th, 1875.*

Know all men by these presents that we, the Jefferson City Gas Light Company, as principal, and Joseph Hernandez, as surity, are held and firmly bound unto Freeman Clark in the full sum of ten thousand dollars, to be paid to the said Freeman Clark, certain attorneys, executors, administrators, or assigns; to which payment well and truly to be made we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals, and dated this 19th day of May, in the year of our Lord one thousand eight hundred and seventy-five.

Whereas, lately, at a circuit court of the United States, fifth judicial circuit, holding sessions in and for the district of Louisiana, in a suit depending in said court, wherein Freeman Clark is plaintiff and the Jefferson City Gas Light Company defendant, and the said Jefferson City Gas-Light Company having obtained a writ of error, and filed a copy thereof in the clerk's office of the said circuit court to reverse
64 the judgment in the aforesaid suit, and a citation directed to the said Freeman Clark, citing and admonishing him to be and appear at a Supreme Court of the United States to be holden at Washington the second Monday of October next:

Now, the condition of the above obligation is such, that if the said Jefferson City Gas Light Company shall prosecute its writ to effect, and answer all damages and costs if it fail to make its plea good, then the above obligation to be void; else to remain in full force and virtue.

(Signed) J. HERNANDEZ, [L. S.]
Pres'd't of Jefferson City Gas-Light Co.

(Signed) J. HERNANDEZ. [L. S.]

Signed and delivered in the presence of—

(Signed) ROBERT MOTT.
(Do.) CHA'S CARROLL.

Approved:

(Signed) W. B. WOODS,
U. S. Judge.

Bond for writ of error.—Filed May 19th, 1875.

Know all men by these presents that we, the Jefferson City Gas Light Company, as principal, and Joseph Hernandez, as surety, are held and firmly bound unto the city of New Orleans in the full and just
65 sum of one thousand dollars, to be paid to the said city of New Orleans, its certain attorneys, executors, administrators, or

assigns; to which payment well and truly to be made we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals and dated this 19th day of May, in the year of our Lord one thousand eight hundred and seventy-five.

Whereas, lately, at a circuit court of the United States, fifth judicial circuit, holding sessions in and for the district of Louisiana, in a suit depending in said circuit court, wherein Freeman Clark was plaintiff, and the Jefferson City Gas Light Company and the City of New Orleans defendants, judgment was rendered against the said defendants; and the said Jefferson City Gas Light Company having obtained a writ of error, and filed a copy thereof in the clerk's office of the said circuit court to reverse the judgment in the aforesaid suit, and a citation directed to the said city of New Orleans, citing and admonishing
66 it to be and appear at a Supreme Court of the United States, to be holden at Washington, the second Monday of October next:

Now, the condition of the above obligation is such, that if the said Jefferson City Gas Light Company shall prosecute its writ to effect, and answer all damages and costs if it fail to make its plea good, then the above obligation to be void; else to remain in full force and virtue.

(Signed) J. HERNANDEZ, [L. S.]
Pres't Jefferson City Gas Co.

(Signed) J. HERNANDEZ, [L. S.]

Sealed and delivered in the presence of—
(Signed) ROBERT MOTT.
(Do.) CHAS. CARROLL.

Approved.
(Signed) W. B. WOODS, *Judge.*

Petition of the city of New Orleans for writ of error.—Filed July 26th, 1875.

To the Hon. W. B. Woods, circuit judge of the United States for the district of Louisiana:

The petition of the city of New Orleans, a corporation chartered and existing under the laws of the State of Louisiana, respectfully represents:

67 That at the April term of the circuit court of the United States, for the 5th circuit, and district of Louisiana, in the suit No. 7142 on the docket thereof, a final judgment was rendered against your petitioner on the 3rd day of May, 1875, in favor of Freeman Clark and of the Jefferson City Gas Light Company, on their call in warranty, and which judgment was signed and became final on the day of May, 1875, to the prejudice of your petitioner, who is irreparably injured thereby.

Your petitioner prays for the allowance of a writ of error to be directed to the said court, that the judgment thereof may be re-examined, and that the same may be reversed, for the manifest error apparent in the judgments aforesaid against your petitioner.

That your petitioner be allowed to give bond, in a sum to be fixed by your honor, to the said Freeman Clark and the said Jefferson City Gas Light Company to secure all costs to be incurred in the prosecu-
68 tion of the said writ of error, that citations issue to said Freeman Clark and said Jefferson City Gas Light Company to appear and answer the writ aforesaid, and for all equitable relief.

(Signed) B. F. JONAS,
City Attorney of Counsel for City of New Orleans.

Order.

A writ of error is allowed in this case as prayed for and according to law, returnable to the Supreme Court of the United States on the second Monday of October next, the petitioner giving bond in the sum of five hundred dollars, with good and solvent security, and conditioned as the law directs, but not to operate as a supersedeas.

July 19th, 1875.

(Signed) W. B. WOODS,
U. S. Circuit Judge.

69 *Bond of the city of New Orleans for writ of error.—Filed July 26th, 1875.*

Know all men by these presents, that we, the city of New Orleans, as principal, and Edward Pilsbury, as surety, are held and firmly bound unto Freeman Clark and the Jefferson City Gas Light Company, in the full and just sum of five hundred dollars to be paid to the said Freeman Clark and the Jefferson City Gas Light Company, their certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents, sealed with our seals and dated this 14th day of July, in the year of our Lord one thousand eight hundred and seventy-five.

Whereas, lately at a circuit court of the United States, fifth judicial circuit, holding sessions in and for the district of Louisiana at New Orleans, in a suit depending in said circuit court, wherein Freeman Clark was plaintiff and the Jefferson City Gas Light Company and the
70 city of New Orleans defendants, judgment was rendered against the said city of New Orleans, defendant; and the said city of New Orleans having obtained a writ of error, and filed a copy thereof in the clerk's office of the said circuit court to reverse the judgment in the aforesaid suit, and a citation directed to the said Freeman Clark and the said Jefferson City Gas-Light Company, citing and admonishing them to be and appear at a Supreme Court of the United States to be holden at Washington the 2d Monday of October next.

Now, the condition of the above obligation is such that if the said city of New Orleans shall prosecute her writ to effect and answer all damages and costs, if she fail to make her plea good, then the above obligation to be void; else to remain in full force and virtue.

(Signed) CHA'S J. LEEDS, [L. S.]
Mayor.

(Signed) E. PILSBURY.

Sealed and delivered in the presence of—
(Signed) B. F. JONAS.

Approved.
(Signed) W. B. WOODS,
U. S. Circuit Judge.

Personally appeared Edward Pilsbury, who, being sworn,
71, 72 says that he is worth over the sum of one thousand dollars after all his debts are paid and property exempt from execution, and that he resides in the city of New Orleans and State of Louisiana.

New Orleans, July 14th, 1875.

(Signed) E. PILSBURY.

Sworn to and subscribed before me this 14th day of July, A. D. 1875
[SEAL.] (Signed) W. T. HOUSTON,
First Justice of the Peace.

73 UNITED STATES OF AMERICA:

Circuit court of the United States, fifth circuit and district of Louisiana.

CLERK'S OFFICE.

I, Francis A. Woolfley, clerk of the circuit court of the United States for the fifth circuit and district of Louisiana, do hereby certify that the foregoing 70 pages contain and form a full, complete, true, and perfect transcript of the record and proceedings had on the trial of the case of Freeman Clark versus Jefferson City Gas Light Company et al., No. 7142 of the docket, so far as the same now remain of record or on file in said court.

Witness my hand and the seal of said court, at the city of New Orleans, this 12th day of August, A. D. 1875.

[SEAL.] F. A. WOOLFLEY, *Clerk.*

I, W. B. Woods, United States judge for the district of Louisiana, do certify that Francis A. Woolfley, whose name is signed to the above certificate as clerk of the circuit court of the United States for the fifth circuit and district of Louisiana, was at the time of signing said certificate, and is now, the clerk of said court; that said certificate is in due form of law, and that full faith and credit are due to his official attestations as such clerk.

Given under my hand, at the city of New Orleans in said district, this 12th day of August, A. D. 1875.

W. B. WOODS, *Judge.*

74 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the circuit court of the United States in and for the fifth circuit, and holding sessions for the district of Louisiana, greeting:

Because in the record and proceedings, as also in the rendition of a judgment of a plea which is in the said circuit court, before you, or some of you, between Freeman Clark and The Jefferson City Gas Light Company and the city of New Orleans, in the suit or proceeding of the said Freeman Clark vs. Jefferson City Gas Light Company et al., No. 7142, on the docket of the circuit court of the United States for the fifth circuit and district of Louisiana, a manifest error hath happened, to the great damage of the said Jefferson Gas Light Company, as by its complaint appears:

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held; that the record and proceedings aforesaid being inspected the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the honorable Morrison R. Waite, Chief Justice of the said Supreme Court of the United States, this 19 day of May, in the year of our Lord one thousand eight hundred and seventy-five.

[SEAL.] F. A. WOOLFLEY,
Clerk of the United States Circuit Court for the District of Louisiana.

(Indorsed:) United States Circuit Court. No. 7142. The Jefferson City Gas Light Company, plaintiff in error, adversus Freeman Clark, def't in error. Writ of error. Filed May 19th, 1875. F. B. Vinot, d'y cl'k.

75 UNITED STATES OF AMERICA, *ss*:

The President of the United States to the honorable the judges of the circuit court of the United States in and for the fifth circuit, and holding sessions for the district of Louisiana, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you, or some of you, between Freeman Clark and the Jefferson Gas Light Company and the city of New Orleans, in the suit or proceeding of the said Freeman Clark versus Jefferson City Gas Light Company et al., No. 7142, on the docket of the said court, a manifest error hath happened, to the great damage of the city of New Orleans, as by its complaint appears:

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the second Monday of October next, in the said Supreme Court, to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

Witness the honorable Morrison R. Waite, Chief-Justice of the said Supreme Court of the United States, this 26th day of July, in the year of our Lord one thousand eight hundred and seventy-five.

[SEAL.] F. A. WOOLFLEY,
Clerk of the United States Circuit Court for the District of Louisiana.

(Indorsed:) United States circuit court. No. 7142. The City of New Orleans, plaintiff in error, versus Freeman Clark and The Jefferson City Gas Light Company, def'ts in error. Writ of error. Filed July 26th, 1875. F. B. Vinot, d'y cl'k.

76 THE UNITED STATES OF AMERICA:

Circuit court of the United States, district of Louisiana.

The President of the United States to Freeman Clark, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the city of Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the fifth circuit and district of Louisiana, wherein the Jefferson City Gas Light Company is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Morrison R. Waite, Chief-Justice of the Su-

preme Court of the United States, this 8th day of June, in the year of our Lord one thousand eight hundred and seventy-five.

[SEAL.] W. B. WOODS, *Judge.*

77 (Indorsed:) United States circuit court. No. 7142. Jefferson City Gas Light Company, pl'ff in error, vs. Freeman Clark, def't in error. Citation. Freeman Clark. Hays & New, att'ys.

Marshal's return.

Received June 10th, 1875, by the U. S. marshal, and on the 12th day of June, 1875, served a copy hereof on Freeman Clark, defendant in error, by handing the same to J. H. New, a member of the law firm of Hays & New, attorneys for said Clark.

C. R. STEELE,
D'y U. S. Marshal.

On this 12th day of June, 1875, personally appeared before me the subscriber, C. R. Steele, and makes oath that he served a copy of the within citation as stated in his official return hereon.

C. R. STEELE,
D'y U. S. Marshal.

Sworn to and subscribed before me this 12th day of June, 1875.

F. B. VINOT,
U. S. Comm'r.

78 THE UNITED STATES OF AMERICA:

Circuit court of the United States, district of Louisiana.

The President of the United States to the city of New Orleans, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the city of Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the fifth circuit and district of Louisiana, wherein the Jefferson City Gas Light Company is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in said writ of error mentioned should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Morrison R. Waite, Chief-Justice of the Supreme Court of the United States, this 8th day of June, in the year of our Lord one thousand eight hundred and seventy-five.

[SEAL.] W. B. WOODS, *Judge.*

79 (Indorsed:) United States circuit court. No. 7142. City of New Orleans. Jefferson City Gas Light Company, plaintiff in error, vs. Freeman Clark, defendant in error. Citation.

Marshal's return.

Received June 10th, 1875, by the U. S. marshal, and on the 11th day of June, 1875, served a copy hereof on the city of New Orleans by handing it to Charles J. Leeds, the mayor of said city, in person at his office.

C. R. STEELE,
D'y U. S. Marshal.

On this 11th day of June, 1875, personally appeared before me the subscriber, C. R. Steele, and makes oath that he served a copy of the within citation as stated in his official return hereon.

C. R. STEELE,
D'y U. S. Marshal.

Sworn to and subscribed before me this 11th day of June, 1875.

F. B. VINOT,
U. S. Comm'r.

80 THE UNITED STATES OF AMERICA:

Circuit court of the United States, district of Louisiana.

The President of the United States to the Jefferson City Gas Light Company, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the city of Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the fifth circuit and district of Louisiana, wherein the City of New Orleans is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in said writ of error mentioned should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Morrison R. Waite, Chief-Justice of the Supreme Court of the United States, this 27th day of July, in the year of our Lord one thousand eight hundred and seventy-five.

W. B. WOODS,
U. S. Circuit Judge.

81 (Indorsed:) United States circuit court. No. 7142. Jefferson City Gas Light Co. The City of New Orleans, plaintiff in error, vs. Freeman Clark and the Jefferson Gas Light Company, defendants in error. Citation.

Marshal's return.

Received Jul' 27, 1875, by the U. S. marshal, and on the 30th of July, 1875, served a copy hereof on the Jefferson City Gas Light Company by handing the same to Joseph Hernandez, the president thereof, in person in this city.

N. O., July 31, 1875.

S. B. PACKARD,
U. S. Marshal,
By S. W. REED,
D'y Marshal.

On this 31st day of July, 1875, personally appeared before me the subscriber, S. W. Reed, and makes oath that he served a copy of the within citation as stated in his official return hereon.

S. W. REED,
D'y U. S. Marshal.

Sworn to and subscribed before me this 31st day of July, 1875.

F. B. VINOT,
Comm'r of the U. S. Court for the Dist. of Louisiana.

82 THE UNITED STATES OF AMERICA:

Circuit court of the United States, district of Louisiana.

The President of the United States to Freeman Clark, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the city of Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the fifth circuit and district of Louisiana, wherein the City of New Orleans is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in said writ of error mentioned should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Morrison R. Waite, Chief-Justice of the Supreme Court of the United States, this 27th day of July, in the year of our Lord one thousand eight hundred and seventy-five.

W. B. WOODS,
U. S. Circuit Judge.

83 (Indorsed:) United States circuit court. No. 7142. The City of New Orleans, plaintiff in error, vs. Freeman Clark and the Jefferson City Gas Light Company, defendants in error. Citation. Freeman Clark. Hays & New, att'ys.

Marshal's return.

Received Jul' 27, 1875, by the U. S. marshal and on the 4th day of Aug., 1875, served a copy hereof on Freeman Clarke by handing it to G. Walker, clerk for Hays & New, att'ys of record for said Clarke; the said service was made by direction of B. F. Jones, attorney for the city.

S. B. PACKARD,
U. S. Marshal,
By S. W. REED,
Deputy.

On this 10th day of August, 1875, personally appeared before me S. W. Reed, a deputy U. S. marshal for the district of Louisiana, and makes oath that he served a copy of the within citation to Freeman Clark, as stated in his official return hereon.

S. W. REED,
D'y U. S. Marshal.

Sworn to and subscribed before me this 10th day of Aug., 1875.

F. B. VINOT,
Comm'r of the U. S. Circuit Court, Dist. of La.

(Indorsement on cover:) No. 101. The Jefferson City Gas Light Company, plaintiff in error, vs. Freeman Clark & The City of New Orleans. Louisiana C. C. U. S. Filed 31st August, 1875. No. 257. The City of New Orleans, plaintiff in error, vs. Freeman Clark & The Jefferson City Gas Light Co. Filed 19th October, 1875.

SUPREME COURT
OF THE UNITED STATES.

No. 101.

THE JEFFERSON CITY GAS LIGHT COMPANY, PLAINTIFF IN ERROR,

VERSUS

FREEMAN CLARK AND THE CITY OF NEW ORLEANS.

BRIEF ON BEHALF OF THE JEFFERSON CITY GAS LIGHT COMPANY.

THOS. J. SEMMES,
ROBT. MOTT,
FRANK N. BUTLER,
Of Counsel for Plaintiff in Error.

F. F. Hansell, Stationer and Printer, 30 Camp St., N. O.

SUPREME COURT
OF THE UNITED STATES.

No. 101.

THE JEFFERSON CITY GAS LIGHT COMPANY, PLAINTIFF IN ERROR,

VERSUS

FREEMAN CLARK AND THE CITY OF NEW ORLEANS.

BRIEF ON BEHALF OF THE JEFFERSON CITY GAS LIGHT COMPANY.

STATEMENT OF THE CASE.

Freeman Clark sued the Jefferson City Gas Light Company and the City of New Orleans for $7,200, the amount of over-due *interest*, on forty-five $1000 bonds, issued by the late City of Carrollton, to the Jefferson City Gas Light Company.

THE PETITION SETS FORTH

that on or about the 11th of January, 1871, the Gas Light Company and the City of Carrollton entered into an agreement, under which the former agreed to lay down gas pipes, mains, etc., and to supply

gas light to certain portions of the City of Carrollton; that, in consideration therefor, the City of Carrollton should issue its forty-five $1000 bonds, having thirty years to run, with interest at eight per cent., payable semi-annually; that "said company should guaranty the bonds AND ASSUME THE PAYMENT OF THE PRINCIPAL THEREOF AT MATURITY; and if, at maturity, said company should fail to pay said bonds, the City of Carrollton would pay the same, and become the owner of all the gas works, etc., constructed under said contract. That pursuant to said contract (the Jefferson City Gas Light Company having complied with the conditions thereof), the City of Carrollton delivered said bonds, with coupons attached, to the said Gas Light Company; that thereupon said company, by its president, John Lockwood, placed upon each of said bonds the following endorsement, and guaranty, to wit: "The Jefferson City Gas Light Company guarantees the payment of the principal *and interest* of this bond to the holder thereof. Signed, John Lockwood, President." That soon thereafter said company sold and delivered said bonds and coupons to petitioner; and that the Jefferson City Gas Light Company and the City of Carrollton are indebted to him for the aggregate amount of over-due interest, as set forth in said petition (pages 1, 2, and 3).

The ANSWER OF THE JEFFERSON CITY GAS LIGHT COMPANY, after pleading the general issue, denied

all responsibility to plaintiff; alleged that the City of Carrollton was alone liable for the coupons of interest, according to the terms of the ordinance and contract sued on, and called said city in warranty (pages 5 and 6).

On the twenty-fifth of March, 1874, the City of Carrollton, by an act of the Legislature, was annexed to, and made part of, the City of New Orleans, which became owner of all the property, and responsible for all the obligations of the defunct city of Carrollton. Subsequently plaintiff, by a supple mental petition, made the city of New Orleans a defendant (p. 7), and again cited the Jefferson City Gas Light Co., who answered (page 8) as follows:

"Now comes the Jefferson City Gas Light Company, one of the defendants, through its undersigned attorneys, and for answer to the supplemental and amended petition filed by the plaintiff says, *that it denies generally all the allegations therein contained tending in any way to show responsibility on the part of this respondent;* wherefore it prays to be hence dismissed with costs.

And this respondent, further answering, saith that by the contract with, and ordinance of, the City of Carrollton, and the statute of the State of Louisiana, referred to and set forth by the plaintiff, in his original and supplemental petitions, the City of New Orleans is liable, and is bound to hold this respondent harmless *from any claim of the plaintiff*,

if any he have, which is denied, against this respondent.

Wherefore this respondent prays the City of New Orleans be called in warranty, etc."

The ANSWER OF THE CITY OF NEW ORLEANS to the supplemental petition and the call in warranty denies all responsibility, and puts at issue the power of the City of Carrollton either to issue the bonds and coupons in controversy, or to bind itself by the aforesaid contract of the eleventh of January, 1871 (pages 9 and 10).

On the trial of the cause plaintiff offered in evidence the coupons of interest sued on; one of the bonds described in the petition, with the endorsement of John Lockwood, President, written across the face of the bond, marked exhibit A (p. 13); the ordinance of the City of Carrollton, authorizing the contract; and the contract with the Jefferson City Gas Light Company, of the 11th of January, 1871, endorsed upon the back of each bond, marked exhibit E (page 15). It was admitted by counsel (pages 11, 12) that the contract referred to in the petition between the City of Carrollton and the Jefferson City Gas Light Company, had been performed, and that the bonds issued by the City of Carrollton to the Company were received by the latter; that each of the said bonds, from which the coupons of interest had been cut, bore on its face an endorsement in these words. "The Jefferson City

Gas Light Company guarantees the payment of the principal and interest of this bond to the holder thereof, John Lockwood, President;" that the signature of Lockwood, to said endorsement, was genuine; that Lockwood was then President, and that the bonds thus endorsed were sold by Lockwood, through brokers, in New York, to plaintiff.

THE COURT CHARGED THE JURY AS FOLLOWS: "That (under the pleadings in this case) the evidence and admissions hereinbefore recited, made a *prima facie* case of liability against said Jefferson City Gas Light Company, in favor of the plaintiff, and that it was not necessary, in order to make such *prima facie* case, for the plaintiff to show, by other evidence, that said John Lockwood, the president of the said Jefferson City Gas Light Company, was authorized, by said company to make said endorsement of said bonds" (p. 12). To the charge of the court to the Jury, Counsel for the Jefferson City Gas Light Company excepted; which exception was reserved and incorporated, in the bill of exceptions, on pages 11 and 12 of the record.

The Jury found a verdict for plaintiff against the Jefferson City Gas Light Company, and the City of New Orleans, *in solido* for $7,200, with five per cent. interest from judicial demand; and a further verdict in favor of the Jefferson City Gas Light Company, against the City of New Orleans, for the same amount and interest (page 11).

The Court rendered judgment in favor of Plaintiff, in accordance with the verdict on the 3d of May, 1875, which judgment is now before this court for review, on writ of error, granted, upon the petition of the Jefferson City Gas Light Company, on the 19th of May, 1875.

ARGUMENT.

I.

The pleadings filed by the Jefferson City Gas Light Company are sufficiently clear and specific, under the rules and practice of the State of Louisiana, to put at issue the want of authority of John Lockwood, president, to bind the company to pay interest through the agreement endorsed by him upon the bonds.

II.

Defendant in error has not made out a *prima facie* case against the company, so as to shift upon plaintiff in error the *onus* of proving the want of authority in Lockwood to bind the company to pay interest by the endorsement in controversy.

III.

The pretended guaranty given by Lockwood, requiring the company to pay the interest coupons, was unauthorized. In the absence of *express* au-

thority, the President was powerless to bind the company by such an agreement.

I.

The pleadings filed by the Jefferson City Gas Light Company are sufficient, under the rules and practice of the State of Louisiana, to put at issue the want of authority of John Lockwood, president, to bind the Company by his agreement *to pay the interest* upon the bonds.

We have shown that the *petition* alleges that the payment of *the interest* on the bonds was guaranteed by the Jefferson City Gas Light Company, through the endorsement made by its president. The *answer* to plaintiff's claim against *the company* is substantially a general denial, traversing the law as well as the facts set forth in the petition, and making it incumbent upon the plaintiff to show, *not* that the president of the Jefferson City Gas Light Company had *signed* the guaranty for the payment of the interest, but that *he was expressly authorized to bind the company by that agreement*, and thereby make it the guarantee of the company.

It is the settled jurisprudence of Louisiana that no admission is to be inferred from the filing of the general denial, in a case where an instrument in writing is sued on, except the genuineness of the signature, which will be presumed unless it is

specially denied; and, when thus denied, the party denying his signature is debarred from urging any other defence. In the case at bar, the signature of Lockwood, president, is not denied; on the contrary, it is admitted. But *his authority to bind the company* by his signature to the endorsement in controversy *is* denied and put at issue, by the general denial in the company's answer. It does not follow that the company is bound from the mere fact that Lockwood *signed* the endorsement, independent of any resolution or authority on the part of the company for him to do so. Plaintiff must show that Lockwood was expressly authorized by the company to make the endorsement; and his want of authority may as well be established under the general issue, as though it were specially denied in some other form of pleading.

"When the defendant answers to the merits, he is not bound to answer specially all the allegations contained in the petition; it is sufficient to deny, generally, all the facts stated, except he be called upon either to acknowledge or deny his signature." La. Code of Practice, Art. 323. "Under the general issue defendant may show *any* fact tending to prove that he is not indebted to plaintiff as alleged." 1st. Rob. La. Rep., p. 299; "Under the general issue *plaintiff must prove all the facts necessary to a recovery.*"

19 La., 366; 5 Rob., 117; 10 Rob., 453.

13 La. Ann., 375; 14 Ann., 120.
9 La. Ann., 119; 18 Ann. 661.

"The general issue reduces the controversy between the parties to the question of the truth or falsity of the plaintiff's allegations, and the legal effects of the facts, when proved."

Herman vs. City of New Orleans. 18 Ann., 661.

II.

Defendant in error has not made out a *prima facie* case, against the company, so as to shift upon it the onus of proving the want of authority in Lockwood to bind it to pay *the interest* in controversy.

If the endorsement of the president had been in conformity to the terms of the contract, the proof or admission of his signature would have been sufficient to have established a *prima facie* case against the company; when, however, upon a simple comparison of "*the endorsement*" with "*the contract*," a stipulation to guaranty the payment of *interest* is found in the former, which is in nowhere referred to or authorized in the latter, the evidence is so contradictory in character, that, not only has defendant in error, failed to make out a presumptive or *prima facie* case, but, we submit, he has affirmatively shown that he is not entitled to any relief, against the company, whatsoever.

III.

The pretended guaranty given by Lockwood, re-

quiring the company to pay the coupons of interest, was unauthorized. In the absence of *express* authority, the president was powerless to bind the company by such an agreement.

We have seen, that on the 11th of January, 1871, a contract was entered into between the city of Carrollton and the Jefferson City Gas Light Company, under which the latter agreed to construct gas pipes, mains and branches, posts, boxes, etc., throughout a portion of said city; that to compensate said company for the work done under said contract, the city of Carrollton issued its forty-five bonds of one thousand dollars each, having thirty years to run, with eight per cent. interest coupons attached, payable semi-annually; that it was stipulated in said contract that the *principal* of said bonds should be guaranteed by the Jefferson City Gas Light Company, and, in the event of their non-payment at maturity by the company, the city of Carrollton would pay the same, and thereby become the owner of the gas works, pipes, posts, etc., erected by the company within its limits; that the city of Carrollton, on account of the great advantages which its citizens would at once enjoy, from the introduction of gas light within its corporate boundaries, and to compensate the company for

the use of the gas pipes, works, posts, etc., agreed to provide for and pay the *coupons of interest* attached to said bonds, as they severally matured; that the bonds were issued, under the agreement, and were delivered by the Mayor of Carrollton to John Lockwood, President of the Jefferson City Gas Light Company; that Lockwood took all the bonds to the city of New York, and *there* wrote across the face of each bond, "The Jefferson City Gas Light Company guarantees the payment of the principal and interest of this bond to the holder thereof. John Lockwood, President," and then sold the bonds, through brokers, to the defendant in error.

There is no proof, showing or tending to show, that Lockwood was ever authorized by the company to guaranty the payment of the coupons of interest attached to said bonds; there is not a particle of evidence that the company ever knew, before the institution of this suit, that Lockwood had made such guaranty; and there is absolutely nothing in the record to establish a ratification of the endorsement by the directors of the company.

As we have already shown the authority of Lockwood to guaranty the payment of the *interest* of the bonds, is denied to put an issue by the pleadings; and his want of such authority is established by the following stipulation of the contract under which the bonds were issued, viz: "*that the company shall guaranty the* SAID BONDS, *and assume the payment of*

the PRINCIPAL *thereof, at maturity.*" A contract binding the company to assume the payment of the *principal* of the bonds is one thing, an agreement to guaranty the payment of both *principal* and *interest* is another and a different engagement; and is an agreement which Lockwood, as President of the Jefferson City Gas Light Company, could not, without express authority, enter into so as to bind the company.

In Mount Stirling Turnpike Company vs. Looney, 1st Metc. 550, the Kentucky Court of Appeals decided, that a corporation is not bound by an express or implied contract, made by the President, unless he has power to bind it by the charter, or by acts of the corporation, authorizing or ratifying the contract. A like doctrine is enunciated in

Farmers' Bank of Burks Co. vs. McKee, 2 Pa. 318.
Macbean vs. Irvine, 4 Bibb, Ky. Rep. 17.
3 Wheaton, 360; 1 Pet. 46; 19 Howard, 318.

The Court said, in Bacon vs. Miss. Ins. Co., 31 Miss., 116, that "the president of an incorporated company, as such, cannot make any agreement, binding upon the company, UNLESS IT IS SHOWN to be within the scope of his authority."

In Hodges vs. Rutland and Burlington Railroad Company, 29 Vermont, 220, it was held—"When the directors of a corporation have established, by resolution, the rate at which certain services shall

be compensated, the president cannot bind the corporation to pay a higher rate."

With like reason, therefore, must the authority of Lockwood, as president of the Jefferson City Gas Light Company be denied and repudiated, when, in violation of the contract of company with the City of Carrollton (which expressly limits the liability of the company to a guaranty of the payment of the *principal* of the bonds), he has attempted to bind the corporation by signing, as president, a guaranty of payment of both *principal* and *interest.*

When the company agreed to guaranty the payment of the *principal*, of forty-five bonds of $1000 each, having thirty years to run, it bound itself to the performance of a very serious and important obligation; but, when the agreement was attempted to be changed by the president into a guaranty to pay annually *ninety* coupons of *interest*, of $40 each, from the date of the bonds till their maturity, in addition to the payment of the *principal*, how much more arduous and responsible the undertaking—a guaranty of just $108,000 more than the company bound itself to pay.

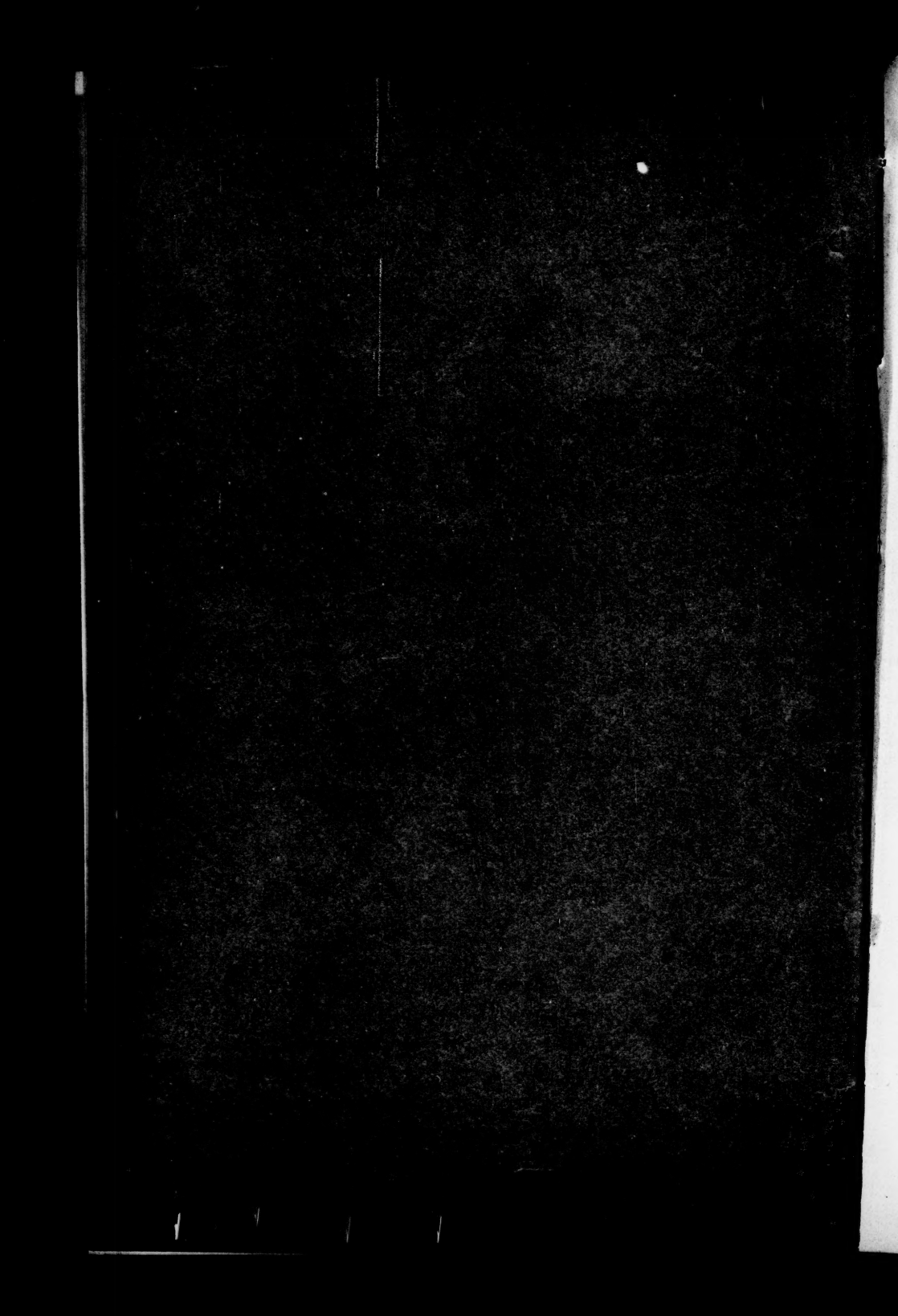
To permit such an agreement to have legal and binding force and effect would be equivalent to bestowing upon the president of a corporation power and authority to annul and destroy any contract made by the company; and, not only power to can-

cel and destroy, but, authority, likewise, to enter into another and a different contract.

We are satisfied this court will never sanction such a doctrine; and, we earnestly ask your Honors to reverse and set aside the verdict and the judgment of the lower court, with costs of appeal.

Respectfully submitted,

THOS. J. SEMMES,
ROBT. MOTT,
FRANK N. BUTLER,
Of Counsel for Plaintiff in Error.



Supreme Court of the United States.

No. 101.

THE JEFFERSON CITY GAS-LIGHT COMPANY,
PLAINTIFF IN ERROR.

vs.

FREEMAN CLARK ET AL.

BRIEF ON BEHALF OF DEFENDANT IN ERROR.

We call the attention of the court to the fact that there is no assignment of error by the plaintiff in error, the Jefferson City Gas-Light Company.

For this reason, we ask that the judgment be affirmed.

See Ryan *v.* Koch, 17 Wall., 19.
Treat *v.* Jennison, 20 Wall., 652.
Lucas *v.* Brooks, 18 Wall., 436.
Maxwell *v.* Stewart, 21 Wall., 72.

In the brief that has been filed by the plaintiff in error, the only points made against the proceedings in the court below are—

1st. That the pleadings in the case were sufficient to put in issue the question of the power of John Lockwood, the President of the Jefferson City Gas-Light Company, to bind that company to pay the interest on the bonds;

And 2d. That on the trial there was not sufficient proof offered by the defendant in error to make out, *prima facie*, the right of said Lockwood to so bind that company.

If we can show to the court that Lockwood had that au-

thority, and that that appears of record in the case, it will not be necessary to occupy time in discussing the question of practice involved in the first proposition.

Indeed, it is conceded in the brief of plaintiff in error that "if the indorsement of the president had been in conformity to the terms of the contracts, the proof or admission of his signature would have been sufficient to have established a *prima facie* case against the company." (See Brief, p. 9.)

With this concession, it can scarcely be necessary for us to go farther than to show that the indorsement made by Lockwood was one authorized to be made, and especially since, in the brief attended to, the burthen of the argument is directed to that question.

By referring to the record, pages 1, 2, it will be seen that the contract or agreement, which was embodied in an ordinance of the city of Carrolton, provides that "the city of Carrolton, through the mayor, shall provide and issue forty-five one thousand-dollar bonds, with eight per cent. interest, payable semi-annually to *the order* of said Gas Light Company, which bonds shall be dated and delivered to the said Gas Light Company," &c., * * "provided the said company shall *guarantee* the said *bonds*, and assume the payment of the *principal* thereof at maturity; and provided further, that if, at the maturity, the said company shall fail to *pay said bonds*, then the said city shall pay the same, and become the owner of the gas works," &c.

The argument of plaintiff in error is, that there was no power in Lockwood under this, to guarantee the payment of interest, but only the principal.

These were coupon bonds, and the court will observe that they were, by the ordinance, required to be made payable *to the order of the Gas Light Company*, and were to be delivered to the company. That the intention was to enable the company to negotiate them is here made unmistakable, and the power to do whatever was necessary to be done in order to carry out this intention, would, even in the absence of express authority, be implied.

But the power to "guarantee the said *bonds*" is expressly given. This, it is claimed, in the brief of plaintiff in error, only has reference to the *principal* of the bonds. The question is this: when the power was given to "guarantee the bonds" did it carry with it the power to guarantee the payment of the interest accruing thereon; or, in other words, does not the power to guarantee the "*bonds*" confer the power to guarantee the interest also.

Since the decision by this court of the case of the United States *v.* Union Pacific R. R. Co., 1 Otto, p. 86, this can hardly be considered an open question. In that case the company had obligated itself to "pay the bonds," and the court say that the words "*evidently imply an obligation to pay both the principal and interest.*"

So here when it is "provided that the company shall guarantee the bonds," it means that the *interest*, as well as the *principal*, shall be guaranteed.

Much stress is laid in the brief in question upon the phrase "and assume the payment of the principal thereof at maturity." This language does not limit or restrict that which precedes it.

On page 17 of record, it will be seen that the amendatory act of incorporation, in providing for payment of all city bonds, severed the provision into two parts; in one, providing a tax to meet interest; and in the other, providing a tax to meet principal "at maturity." The ordinance (Record, pp. 1 and 2) is in phraseology but an imitation of the city charter in respect of this division of the statement of the gas company's guarantee into two parts: one covering the bonds as an entirety, and the other covering payment of principal alone at maturity.

The ordinance (Record, pp. 1 and 2) most carefully and by a double provision required the gas company to guarantee payment of the entire bond. This is done by its compelling the gas company to place its "order" or indorsement on the entire bond, covering and guaranteeing its principal and interest. Is it conceivable that such an "order" as this ordinance compels to be made, before a bond

could be sold, can apply to only one half, to wit, principal of that *entire* instrument it is compelled to guarantee?

Then the provision requiring the guarantee to cover both principal and interest is repeated in the words "shall guarantee the said bonds." Having thus twice over required the guarantee to cover both principal and interest, the added words "and assume the payment of the principal thereof at maturity" were added in compliance with and imitation of said words of the charter, in making separate provision (Record, p. 17) for meeting the principal at maturity.

But, again, there may be this additional reason for this added provision for the gas company paying principal at maturity, to wit, that, as between the city and the gas company, the gas company was to be the principal and the party ultimately liable to pay the principal, but not the interest, and that if gas company paid principal at maturity then it was to own works, and if not, the city was to own them.

But in this view also, it is express and plain on the face of the ordinance that, as to the purchaser of the bond, both the city and the gas company were to be responsible for the entire bond, both principal and interest.

With this, it, as it seems to us, we might safely rest the case.

It appears, however, by the record, that in the court below the plaintiff in error, the City of New Orleans, took an exception to the ruling of the court in refusing to charge the jury that the Legislature of the State of Louisiana had no power to ratify or legalize the issuance of the bonds in question, but, on the contrary, charged the jury that the Legislature had such power. (See Record, p. 13.)

The City of New Orleans has neither filed a brief nor assignment of error, and therefore we ask an affirmance of this judgment, so far as said City of New Orleans is concerned.

But, in order to meet the point raised by this exception, we contend—

1st. That there can be no doubt that the Legislature of the State of Louisiana had the power to authorize the city of Carrollton to issue these bonds.

2d. If that be so, then it follows that if, by any reason, the issuance thereof was not in conformity with law, the Legislature could legalize them after they were issued.

In support of this, we refer to the case of Thompson *v.* Lee County, 3 Wall., at page 331. This court say, "if the Legislature possessed the power to authorize the act to be done, it could, by a retrospective act, cover the evils which existed, because the power thus conferred had been irregularly executed."

Judging from the language of the bill of exceptions, it would seem that it was claimed that the city of Carrollton had failed to make a legal issue of these bonds, because it had failed in the ordinance providing for their issue to also provide "the means of paying the principal thereof." That point, we presume, is made upon the 5th section of act No. 2 of 1871. (See Record, p. 16.) This section provides that "the mayor and council are authorized and empowered to fund the outstanding debts and obligations of the said city, (Carrollton,) created for the wharves, streets, *gas*, &c., by issuing bonds of said city, running for thirty years, with interest at eight per cent., payable semi-annually: *Provided*, That any ordinance providing for the issuance of such bonds shall provide for the payment of principal and interest of such bonds by levying such annual tax as will provide a sufficient sum to pay the interest of said bonds as the same may become due, and provide a sinking fund to meet the principal at maturity."

The ordinance under which our bonds were issued provides for the payment of the interest, but makes no mention of a sinking fund for the principal.

Here, then, is the authority granted to issue the bonds, and the claim is substantially, as we infer, that the bonds were invalid, because the ordinance did not comply with the statutory requirement as to providing a sinking fund to meet the principal.

In the case of Thompson *v.* Lee County, *supra*, it was argued, that when the county voted to take stock, &c., they attempted to exercise a power that had not been delegated, or had executed it so defectively that their proceedings were without authority of law, and void; but this court decided, as quoted, *supra*, that the Legislature had the authority, by a retrospective act, to cure the defect, and make them valid.

In a note to page 124, *Green's Brice's Ultra Vires*, the following language is used:

"The Legislature having the power to waive the objection that an act is invalid for want of legislative assent, may ratify such act by subsequent statute, and thus confirm the mortgage, so far as it was defective for want of authority from the Legislature."

In support of this is cited—

Shepley *v.* A. and St. L. R. R. Co., 55 Me., 395.
Portland and K. R. R. Co. *v.* Kennebec and P. R. R. Co., 59 Me., 9.
Richards *v.* Merrimack and Conn. R. R. Co., 44 N. H., 127.
Shaw *v.* Norfolk R. R. Co., 5 Gray, 162.
31 Barb., 258.
37 Cal., 354.
Commissioners *v.* Thayer, 4 Otto, 642.

By the 5th section of the act No. 71, of 1874, (see Record, p. 19,) annexing the city of Carrollton to the city of New Orleans, these bonds received express legislative recognition and ratification. There was, therefore, no error in refusing the charge asked, nor in giving the one which was given.

But we insist that these bonds were valid, without any ratification or legalization by the Legislature. The authority to issue them was expressly given by section 5 of act No. 2, of 1871, as we have seen. After providing directly for issuing the bonds, the section proceeds as follows. "*Provided*, That any ordinance providing for the issuance of

bonds shall provide for the payment of principal and interest of such bonds, by levying such annual tax as will provide a sufficient sum to pay the interest, &c., and provide a sufficient sinking fund," &c.

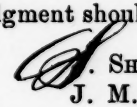
Now, here we have first the power granted to issue the bonds, then a provision as to providing funds with which to meet interest and principal; the former in no way made to depend upon the latter. This proviso, above quoted, is only *directory*. There is nothing in the language to indicate that the bonds should be invalid if the means to pay them were not at the same time provided.

Sedg. on Cons. and Stat. Con., 318, 319, 320.

The omission to provide for this sinking fund was, at most, an irregularity. For irregularities, the validity of the bonds is not affected.

Town of East Lincoln *v.* Davenport, 4 Otto, 801.

We submit that the judgment should be affirmed.



A. Shellabarger,
J. M. Wilson,
Attorneys for Defendant in Error.

Supreme Court of the United States.

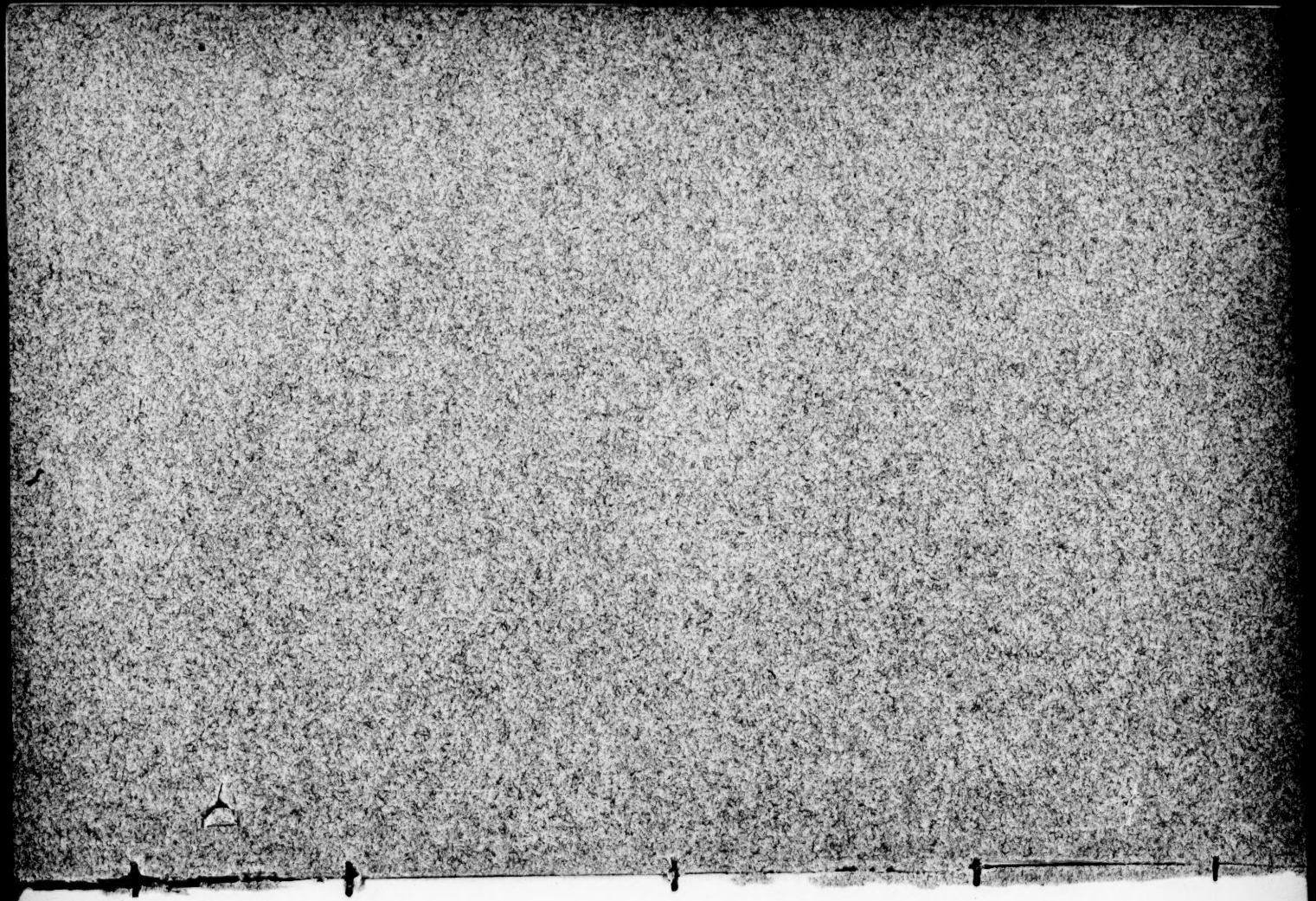
THE JEFFERSON CITY GAS LIGHT COMPANY
vs.
FREEMAN CLARK and CITY of NEW ORLEANS.
No. 101

CITY of NEW ORLEANS
vs.
CLARK and GAS COMPANY.
No. 257.

Brief of P. PHILLIPS,
for City of New Orleans.

November 15, 1877.

R. O. Polkinhorn, Printer, 632 and 634 D Street, Washington, D. C.



Supreme Court of the United States.

THE JEFFERSON CITY GAS LIGHT COMPANY
vs.
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CITY of NEW ORLEANS
vs.
CLARK and GAS COMPANY.
No. 257.

Brief of P. PHILLIPS,

for City of New Orleans.

This was an action by Clark against the Gas Company and the city of Carrolton in the Circuit Court, U. S., for Louisiana, on certain bonds issued by said city to the Gas Company and transferred by said company to the plaintiff Clark.

The city of Carrolton filed its exception and answer, denying that the plaintiff Clark was the owner of the bonds or had any interest therein, but that they were the property of the Gas Company.

It further alleged that a suit had been brought on these bonds in the District Court of the State, which had been decided adversely against the Gas Company, and this was *res adjudicata*.

If these exceptions are overruled, then the defendant pleads the general issue and, in addition, declares that it is in no wise bound for said bonds:

1st. Because the city was not authorized to issue the bonds and the same were issued by the officers of the city in violation of its charter.

2d. That the ordinance and contract made under it were illegal, null and void, and if the city had been expressly authorized to issue them (which is denied), the council never made in the ordinance contracting said debt, any provision to pay the principal or interest as required by law. p. 4.

The answer of the Gas Company insists upon the validity of the bonds issued under the contract with the city of the 18 January, 1871, for supplying the city with gas, and that the said city had accepted the works of the company and has had the benefit of the same ever since, and is therefore bound to pay the coupons as they become due.

The answer contains a general denial of the claim of Clark, the plaintiff, and prays that the city of Carrolton be called in warranty, "and be condemned to pay to respondent any sum of money respondent may be decreed to pay to the plaintiff." Clark's original petition was filed 7 February, 1874, and on 26 March, 1875, after said answer had been made, he filed a supplemental petition averring that since his original, the legislature had passed an Act No. 71, promulgated 25 March, 1874, repealing the act incorporating Carrolton and annexing it to the city of New Orleans, and further that by the 5 section of that act, the city of New Orleans was made liable for said bonds.

That thereby the plaintiffs' cause of action now exists against the said city of New Orleans, and said city is liable in *solido* with the said Gas Company. (p. 7.)

To this supplemental petition the Gas Company filed its answer, denying all the allegations of the petition

tending in any way to shun responsibility on the part of the respondent.

It further alleges that the city of New Orleans is bound to hold the respondent harmless from any claim of the plaintiff, if any he has against the respondent, and prays that the city of New Orleans be called in warranty. (p. 8.)

The city of New Orleans also filed its answer, insisting upon the exception filed by the city of Carrolton, and that it should first be disposed of.

After a general denial of the allegations of the supplemental petition, it avers, that the city of Carrolton was, without power to issue the bonds. That there was neither a moral nor legal obligation of New Orleans to pay the same, and that any act of the legislature imposing such obligation on the city is null and void. (p. 9.)

There was a judgment in favor of Clark for $7,200 against the Gas Company, and a judgment in favor of the company, on the call in warranty, against the city of New Orleans for a like sum. (p. 11.)

The bonds issued by the Gas Company are copied at p. 13, and are made payable to the Jefferson City Gaslight Company *or order*, and contain the following endorsement: "The Jefferson City Gaslight Company guarantee the payment of the principal and interest of this bond to the holder thereof—John Lockwood, President."

The company denied that this guaranty was authorized, and in their bill of exceptions, p. 12, excepted to the charge of the court, asserting their liability. A bill of exceptions was taken also by the city of New Orleans, in which the charge was asked—

"That the legislature had no power to legalize the issuance of the bonds to the Gas Company, a private corporation, and because in the issuance of the bonds, the said city of Carrolton created a debt without providing

in the same ordinance, or otherwise, the means of paying the principal thereof. This the court refused, and charged that the legislature had the power to legalize the same. (p. 13.)

The writ of error by the city of New Orleans, is brought to reverse the charge of the court.

Assignment of Error.

The city of New Orleans assigns for error the charge of the court above given.

Argument.

The Gaslight Company, a private corporation, under a contract with the city of Carrolton, was permitted to lay its pipes, &c., on certain streets so as to furnish the citizens with gas. To assist the company in carrying out this enterprise, the city issued the bonds in question. By the terms of the contract, the bonds were to be paid at maturity by the Gas Company, and were to be guaranteed by it.

For the protection of the city, it was stipulated, that if the company failed to pay the same at maturity, then the city was to pay the bonds, and become the owner of the gas-works, pipes, &c. (See contract, p. 15.)

The bonds thus issued are dated 1 July, 1871, and are made payable in thirty years. The form of the bond is given at p. 13.

The Act of 1855, § 4, No. 263, provides: "that the constituted authorities of incorporated towns and cities in this State, shall not hereafter have power to contract any debt or pecuniary liability, without fully providing in the ordinance creating the debt the means of paying the principal and interest of the debt or contract."

The ordinance under which the bonds were issued at page 15, makes no such provision for the payment of

principal and interest, as is required by the terms of the act, and was therefore void.

The condition annexed to the power is not directory but mandatory.

The constitution of the State imposes a like restriction on the State, where the amount appropriated is over $100,000, as follows:

Article 3, Constitution of 1868: "Whenever the General Assembly shall contract a debt exceeding the sum of $100,000, it shall be the law creating the debt, provide adequate ways and means for the payment of the current interest and of the principal, when the same shall become due."

We need not dwell on this as—from the bill of exceptions it seems to have been admitted that the bonds when issued, were void, and the charge of the court proceeds on this assumption.

The only question then to be considered is, as to the force and effect of the act of 1874, for annexing Carrolton to the city of New Orleans, and they depend upon these words: "And the debt and all other indebtedness, or liabilities of the city of Carrolton, including the funding and improvement bonds, and the bonds issued to the Jefferson City Gaslight Company, and known as the gas bonds, and notes, interest coupons, wages, salary due or to become due, warrants or other species of obligations whatever, shall be assumed and paid by the City of New Orleans, and said city is hereby declared liable therefore." (p. 19.)

We maintain that the proper interpretation of the statute is to render the city of New Orleans liable only for what the town of Carrolton was bound to pay. If as to Carrolton, the bonds were void, New Orleans was not subjected to their payment.

The indebtedness or liabilities are described as includ-

ing the funding and improvement bonds, and the bonds issued to the Gas Company.

We have here three classes of bonds, "Funding Bonds," "Improvement Bonds," and the "Gas Bonds."

If it be said that the mere reference to the gas bonds, was intended to compel their payment, without regard to their validity, the same thing must follow in reference to the "funding bonds," and the "improvement bonds." The description of the two first is equally certain as the reference to the last.

It could not have been the intention of the legislature to direct payment of all these various bonds without regard to their validity.

To arrive at the extraordinary conclusion that it was intended to enforce the payment of all these bonds without regard to their validity, the legislative intent must be so clearly shown as to leave no escape from the conclusion.

We are not now dealing with a transaction between two individuals, but with the action of the government. We cannot impute to the legislature a knowledge of all the facts and circumstances which attended the issue of these funding, improvement, and gas bonds, so as to say that they were cognizant of the grounds upon which either their validity or invalidity might be maintained.

It is on this principle that laches cannot be imputed to the government.

And on like principle, while the maxim "*vigilantibus et non dormientibus jura subvenient*," is a rule for the subject, "*nullum tempus occurrit regi*," is the sovereign's plea.

This doctrine is not founded on the notion of extraordinary prerogative, but upon a great public policy. The government can transact its business only through its agents, and its operations are so numerous, and its

agents are so scattered that the utmost vigilance could not save the public from the most serious losses, if the opposite doctrine should be applied to its transactions.

U. S. vs. *Kirkpatrick*, 9 Wheat., 720.

Again, it is the well settled rule of construction, that acts of Parliament which impose a duty on the public, will be critically construed. When any ambiguity is found, the construction will be in favor of the public; when the public is to be charged with a burden, the intention of the legislature to impose that burden must be explicially and distinctly shown.

Dwarris, 646.

Assuming that the legislature intended to give validity to these bonds, we then are to inquire had it the power to do so?

Could the legislature compel the City of New Orleans to levy a tax to pay the Gas Company for their undertaking to supply the citizens with gas?

This undertaking was a private enterprise. It is true it redounded to the convenience and comfort of a large portion of the citizens, to wit, those who lived in that portion of the city which, by the terms of the contract, were lighted by gas.

That not every convenience, comfort, or advantage derived by the public from a private enterprise, will constitute a proper basis for taxation, is fully decided in *Loan Association* vs. *Topeka*, 20 Wall., 658.

But there is a another ground for holding this act to be invalid.

Article 110 of the constitution of 1868 provides, "No *ex post facto* law, nor retroactive law, nor any law impairing the obligation of contracts, shall be passed."

Now, the construction which we have given to the

statute, brings it into harmony with the constitution, and the contrary construction makes it conflict with it.

Retroactive or retrospective laws may be passed by those States where there is no constitutional provision on the subject, but here we have a direct inhibition.

The term retroactive or retrospective is applied to those acts of the legislature which are made to operate upon some subject, contract, or crime which existed before the passage of the act, so there can be no doubt that the act in question is retroactive, and comes expressly within the constitutional inhibition. Society for propagation of the Gospel.

2 Gall, 139.

We submit that whether we look to the construction of the statute or to its validity, there was no obligation to pay these bonds, and the judgment against the city of New Orleans should be reversed.

P. PHILLIPS,
For City of New Orleans.